

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, NORTHERN DIVISION

2006 SEP -1 A 11: 09

DISTRICT OF UTAH

<p>UNITED STATES OF AMERICA, Plaintiff, vs. MARTIN HARO TRETO a/k/a Martin Haro & Martin Treto-Haro, Defendant.</p>	<p>Case #: 1:05CR00085-DB JUDGMENT OF FORFEITURE JUDGE: DEE BENSON</p>
---	--

BY: DEPUTY CLERK

IT IS HEREBY ORDERED that:

1. As a result of a plea of guilty to Count 1 of the Superseding Indictment for which the government sought forfeiture pursuant to 21 U.S.C. § 853, the defendant Martin Haro Treto shall forfeit to the United States all property, real or personal, that is derived from, used, or intended to be used in violation of 21 U.S.C. § 841(a)(1), including but not limited to:

- 2000 Dodge Durango, VIN: 1B4HS28N6YF135305

2. The Court has determined that based on a guilty plea of intentionally and knowingly distributing methamphetamine, that the above-named property is subject to forfeiture, that the defendant had an interest in the property, and that the government has established the requisite nexus between such property and such offense.

IT IS FURTHER ORDERED:

3. Pursuant to Fed. R. Crim. P. 32.2(b)(3), the Amended Preliminary Order of Forfeiture is made final as to the defendant and the Judgment of Forfeiture shall be made part of

the sentence and included in the judgment.

4. Any petition filed by a third party asserting an interest in the subject property shall be signed by the petitioner under penalty of perjury and shall set forth the nature and extent of the petitioner's acquisition of the right, title, or interest in the subject property, any additional facts supporting the petitioners claim and relief sought.

5. After the disposition of any motion filed under Fed. R. Crim. P. 32.2(c)(1)(A) and before a hearing on the petition, discovery may be conducted in accordance with the Federal Rules of Criminal Procedure upon a showing that such discovery is necessary or desirable to resolve factual issues.

6. The United States shall have clear title to the subject property following the Court's disposition of all third party interests, or, if none, following the expiration of the period provided in 21 U.S.C. § 853 which is incorporated by 18 U.S.C. § 982(b) for the filing of third party petitions.

7. The Court shall retain jurisdiction to enforce this Order, and to amend it as necessary, pursuant to Fed. R. Crim. P. 32.2(e).

Dated this 31st day of August, 2006.

BY THE COURT:


DEE BENSON, Judge
United States District Court

IN THE UNITED STATES DISTRICT COURT

FILED
U.S. DISTRICT COURT

DISTRICT OF UTAH, NORTHERN DIVISION

2006 SEP -1 P 2: 25

DISTRICT OF UTAH

UNITED STATES OF AMERICA,

Case No. 1:06-CR-00019-JTG

DEPUTY CLERK

Plaintiff,

v.

ORDER TO CONTINUE SENTENCINGS

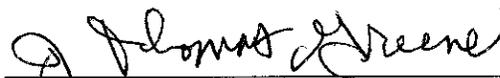
THOMAS FRANK BEVAN and ELLEN :
JOHNSON BEVAN,

Defendants.

Judge J. Thomas Greene

The Court, having considered the Government's First Motion to Continue Sentencings, there being no objections by the defendants, and good cause appearing,

IT IS ORDERED that the sentencings in the above-captioned action are continued from October 5, 2006 to the 16th day of November, 2006, beginning at 10 AM



J. Thomas Greene
United States District Judge

United States District Court

NORTHERN DISTRICT OF UTAH

FILED IN UNITED STATES DISTRICT COURT DISTRICT OF UTAH
SEP 05 2006
By MARKUS B. ZIMMER, Clerk
DEPUTY CLERK

UNITED STATES OF AMERICA

v.

ORDER SETTING CONDITIONS OF RELEASE

James Rowell

Case Number: 1:06cr67 TC

IT IS SO ORDERED that the release of the defendant is subject to the following conditions:

- (1) The defendant shall not commit any offense in violation of federal, state or local or tribal law while on release in this case.
- (2) The defendant shall immediately advise the court, defense counsel and the U.S. attorney in writing of any change in address and telephone number.
- (3) The defendant shall appear at all proceedings as required and shall surrender for service of any sentence imposed as directed. The defendant shall next appear at (if blank, to be notified)

PLACE

on

DATE AND TIME

Release on Personal Recognizance or Unsecured Bond

IT IS FURTHER ORDERED that the defendant be released provided that:

- (4) The defendant promises to appear at all proceedings as required and to surrender for service of any sentence imposed.
- (5) The defendant executes an unsecured bond binding the defendant to pay the United States the sum of _____ dollars (\$)

in the event of a failure to appear as required or to surrender as directed for service of any sentence imposed.

Additional Conditions of Release

Upon finding that release by one of the above methods will not by itself reasonably assure the appearance of the defendant and the safety of other persons and the community, it is FURTHER ORDERED that the release of the defendant is subject to the conditions marked below:

- (6) The defendant is placed in the custody of:
 - (Name of person or organization)
 - (Address)
 - (City and state) (Tel.No.)

who agrees (a) to supervise the defendant in accordance with all the conditions of release, (b) to use every effort to assure the appearance of the defendant at all scheduled court proceedings, and (c) to notify the court immediately in the event the defendant violates any conditions of release or disappears.

Signed: _____
Custodian or Proxy

- (X) (7) The defendant shall:
 - (X) (a) maintain or actively seek employment.
 - (b) maintain or commence an educational program.
 - (c) abide by the following restrictions on his personal associations, place of abode, or travel:
 - (d) avoid all contact with the following named persons, who are considered either alleged victims or potential witnesses:
 - (X) (e) report on a regular basis to the supervising officer as directed. USPO will notify USATTY if dft misses any appt.
 - (f) comply with the following curfew:
 - (X) (g) refrain from possessing a firearm, destructive device, or other dangerous weapon.
 - (h) refrain from excessive use of alcohol.
 - (i) refrain from any use or unlawful possession of a narcotic drug and other controlled substances defined in 21 U.S.C. §802 unless prescribed by a licensed medical practitioner.
 - (j) undergo medical or psychiatric treatment and/or remain in an institution, as follows:
 - (k) execute a bond or an agreement to forfeit upon failing to appear as required, the following sum of money or designated property
 - (l) post with the court the following indicia of ownership of the above-described property, or the following amount or percentage of the above-described money:
 - (m) execute a bail bond with solvent sureties in the amount of \$
 - (n) return to custody each (week)day as of _____ o'clock after being released each (week)day as of _____ o'clock for employment, schooling or the following limited purpose(s):
 - (X) (o) surrender any passport to pretrial officer within 72 hours
 - (p) obtain no passport
 - (q) the defendant will submit to drug/alcohol testing as directed by the pretrial office. If testing reveals illegal drug use, the defendant shall participate in drug and/or alcohol abuse treatment, if deemed advisable by supervising officer.
 - (r) participate in a program of inpatient or outpatient substance abuse therapy and counseling if deemed advisable by the supervising officer.
 - (s) submit to an electronic monitoring program as directed by the supervising officer.
 - (X) (t) 72 hours for dft to find other accommodations to reside
 - (X) (u) Dft can use internet for work purposes only. Cannot use internet at home. Internet directory will be subject to review. Email can be used at work only.
 - (X) (v) No unsupervised contact with children under the age of 18
 - (X) (w) Dft is to maintain residence

Advice of Penalties and Sanctions

TO THE DEFENDANT:

YOU ARE ADVISED OF THE FOLLOWING PENALTIES AND SANCTIONS:

A violation of any of the foregoing conditions of release may result in the immediate issuance of a warrant for your arrest, a revocation of release, an order of detention, and a prosecution for contempt of court and could result in a term of imprisonment, a fine, or both.

The commission of a Federal offense while on pretrial release will result in an additional sentence of a term of imprisonment of not more than ten years, if the offense is a felony; or a term of imprisonment of not more than one year, if the offense is a misdemeanor. This sentence shall be in addition to any other sentence.

Federal law makes it a crime punishable by up to 10 years of imprisonment, and a \$250,000 fine or both to obstruct a criminal investigation. It is a crime punishable by up to ten years of imprisonment and a \$250,000 fine or both to tamper with a witness, victim or informant; to retaliate or attempt to retaliate against a witness, victim or informant; or to intimidate or attempt to intimidate a witness, victim, juror, informant, or officer of the court. The penalties for tampering, retaliation, or intimidation are significantly more serious if they involve a killing or attempted killing.

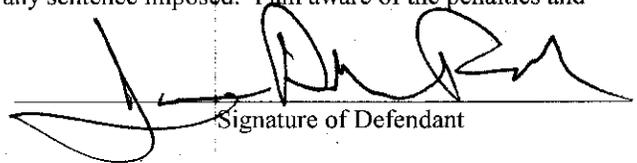
If after release, you knowingly fail to appear as required by the conditions of release, or to surrender for the service of sentence, you may be prosecuted for failing to appear or surrender and additional punishment may be imposed. If you are convicted of:

- (1) an offense punishable by death, life imprisonment, or imprisonment for a term of fifteen years or more, you shall be fined not more than \$250,000 or imprisoned for not more than 10 years, or both;
- (2) an offense punishable by imprisonment for a term of five years or more, but less than fifteen years, you shall be fined not more than \$250,000 or imprisoned for not more than five years, or both;
- (3) any other felony, you shall be fined not more than \$250,000 or imprisoned not more than two years, or both.
- (4) a misdemeanor, you shall be fined not more than \$100,000 or imprisoned not more than one year, or both.

A term of imprisonment imposed for failure to appear or surrender shall be in addition to the sentence for any other offense. In addition, a failure to appear or surrender may result in the forfeiture of any bond posted.

Acknowledgment of Defendant

I acknowledge that I am the defendant in this case and that I am aware of the conditions of release. I promise to obey all conditions of release, to appear as directed, and to surrender for service of any sentence imposed. I am aware of the penalties and sanctions set forth above.


Signature of Defendant

Address

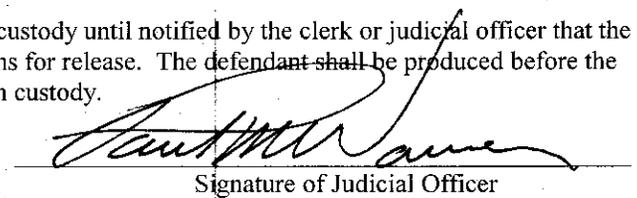
City and State

Telephone

Directions to the United States Marshal

- The defendant is ORDERED released after processing.
- The United States marshal is ORDERED to keep the defendant in custody until notified by the clerk or judicial officer that the defendant has posted bond and/or complied with all other conditions for release. The defendant shall be produced before the appropriate judicial officer at the time and place specified, if still in custody.

Date: 5 September 2006


Signature of Judicial Officer

Magistrate Judge Paul M. Warner

Name and Title of Judicial Officer

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
Central Division for the District of Utah

MEGAN KIRBY,

Plaintiff,

vs.

SARAH H. MARTIN,

Defendant.

SCHEDULING ORDER

Case No. 1:06-CV-65 PGC

District Judge Paul G. Cassell

Magistrate Judge

Pursuant to Fed. R. Civ. P. 16(b), the Magistrate Judge¹ received the Attorneys' Planning Report filed by counsel. The following matters are scheduled. The times and deadlines set forth herein may not be modified without the approval of the Court and on a showing of good cause.

The Order to Show Cause has been satisfied.

****ALL TIMES 4:30 PM UNLESS INDICATED****

- | 1. PRELIMINARY MATTERS | <u>DATE</u> |
|---|--------------------|
| Nature of claim(s) and any affirmative defenses: | |
| a. Was Rule 26(f)(1) Conference held? | <u>Yes</u> |
| b. Has Attorney Planning Meeting Form been submitted? | <u>Yes</u> |
| c. Was 26(a)(1) initial disclosure completed? | <u>Yes</u> |
-
- | 2. DISCOVERY LIMITATIONS | <u>NUMBER</u> |
|---|----------------------|
| a. Maximum Number of Depositions by Plaintiff(s) | <u>10</u> |
| b. Maximum Number of Depositions by Defendant(s) | <u>10</u> |
| c. Maximum Number of Hours for Each Deposition
(unless extended by agreement of parties) | <u>7</u> |
| d. Maximum Interrogatories by any Party to any Party | <u>50</u> |
| e. Maximum requests for admissions by any Party to any Party | <u>No Limit</u> |
| f. Maximum requests for production by any Party to any Party | <u>No Limit</u> |

3. **AMENDMENT OF PLEADINGS/ADDING PARTIES²**
 - a. **Last Day to File Motion to Amend Pleadings**
 - b. **Last Day to File Motion to Add Parties**
4. **RULE 26(a)(2) REPORTS FROM EXPERTS³**
 - a. **Plaintiff** 3/28/07
 - b. **Defendant** 4/28/07
 - c. **Counter Reports**
5. **OTHER DEADLINES**
 - a. **Discovery to be completed by:**
 - Fact discovery** 2/28/07
 - Expert discovery** 7/28/07
 - b. **(optional) Final date for supplementation of disclosures and discovery under Rule 26 (e)**
 - c. **Deadline for filing dispositive or potentially dispositive motions** 8/15/07
6. **SETTLEMENT/ ALTERNATIVE DISPUTE RESOLUTION**
 - a. **Referral to Court-Annexed Mediation** No
 - b. **Referral to Court-Annexed Arbitration** No
 - c. **Evaluate case for Settlement/ADR on**
 - d. **Settlement probability:**
The parties have agreed to a mediation in this case. The mediation conference is currently set for 10/16/06.
7. **TRIAL AND PREPARATION FOR TRIAL:**
 - a. **Rule 26(a)(3) Pretrial Disclosures⁴**
 - Plaintiffs** **10/26/07**
 - Defendants** **11/9/07**
 - b. **Objections to Rule 26(a)(3) Disclosures**
(if different than 14 days provided in Rule)
 - c. **Special Attorney Conference⁵ on or before** **11/23/07**
 - d. **Settlement Conference⁶ on or before** **12/7/07**

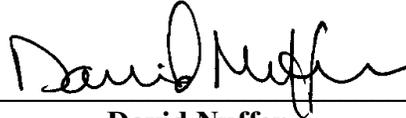
e.	Final Pretrial Conference		3:00 p.m.	12/20/07
f.	Trial	<u>Length</u>	<u>Time</u>	<u>Date</u>
	i. Bench Trial			
	ii. Jury Trial	<u>4 Days</u>	<u>8:00 a.m.</u>	<u>1/22/08</u>

8. OTHER MATTERS:

Counsel should contact chambers staff of the District Judge regarding Daubert and Markman motions to determine the desired process for filing and hearing of such motions. All such motions, including Motions in Limine should be filed well in advance of the Final Pre Trial. Unless otherwise directed by the court, any challenge to the qualifications of an expert or the reliability of expert testimony under Daubert must be raised by written motion before the final pre-trial conference.

Dated this 5th day of September, 2006.

BY THE COURT:



David Nuffer
U.S. Magistrate Judge

1. The Magistrate Judge completed Initial Pretrial Scheduling under DUCivR 16-1(b) and DUCivR 72-2(a)(5). The name of the Magistrate Judge who completed this order should NOT appear on the caption of future pleadings, unless the case is separately referred to that Magistrate Judge. A separate order may refer this case to a Magistrate Judge under DUCivR 72-2 (b) and 28 USC 636 (b)(1)(A) or DUCivR 72-2 (c) and 28 USC 636 (b)(1)(B). The name of any Magistrate Judge to whom the matter is referred under DUCivR 72-2 (b) or (c) should appear on the caption as required under DUCivR10-1(a).
2. Counsel must still comply with the requirements of Fed. R. Civ. P. 15(a).
3. A party shall disclose the identity of each testifying expert and the subject of each such expert's testimony at least 60 days before the deadline for expert reports from that party. This disclosure shall be made even if the testifying expert is an employee from whom a report is not required.
4. Any demonstrative exhibits or animations must be disclosed and exchanged with the 26(a)(3) disclosures.
5. The Special Attorneys Conference does not involve the Court. Counsel will agree on voir dire questions, jury instructions, a pre-trial order and discuss the presentation of the case. Witnesses will be scheduled to avoid gaps and disruptions. Exhibits will be marked in a way that does not result in duplication of documents. Any special equipment or courtroom arrangement requirements will be included in the pre-trial order.
6. Counsel must ensure that a person or representative with full settlement authority or otherwise authorized to make decisions regarding settlement is available in person or by telephone during the Settlement Conference.

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
NORTHERN DIVISION

**THE PROCTER & GAMBLE
COMPANY and THE PROCTER &
GAMBLE DISTRIBUTING COMPANY,**

Plaintiffs,

vs.

RANDY L. HAUGEN, et al.,

Defendants.

ORDER

Case No. 1:95-cv-00094-TS-PMW

Judge Ted Stewart

Magistrate Judge Paul M. Warner

This matter was referred to Magistrate Judge Paul M. Warner by District Judge Ted Stewart pursuant to 28 U.S.C. § 636(b)(1)(A). In a July 14, 2006 order,¹ the court indicated that it would conduct an *in camera* review of a group of documents, all of which The Procter & Gamble Company and The Procter & Gamble Distributing Company (“Plaintiffs”) either refused to produce to Randy L. Haugen, et al. (“Defendants”), or produced to Defendants in redacted form, based on claims of privilege. The court has completed the *in camera* review and will now rule on whether the documents in question are privileged.

The overwhelming majority of the documents submitted by Plaintiffs are privileged under the attorney-client privilege, the work product doctrine, or both. Accordingly, Plaintiffs are not required to produce those documents to Defendants. However, the court has determined that three of the documents are not privileged and must be produced to Defendants. For ease of

¹ Docket no. 891.

reference, the court will identify each of these three documents with the data provided by Plaintiffs in their document entitled, "Explanation of Reasons for Redacting or Withholding Documents."

IT IS HEREBY ORDERED:

1. Plaintiffs shall produce to Defendants, in its entirety, the document identified as RFP No. 11, 11/19/96 Privilege Log Doc. No. 306, Bates No. PRIV 1076. Plaintiffs originally provided this document to Defendants in redacted form, claiming that the redacted portion was privileged under the work product doctrine. In the copy of the document submitted to the court for review, the redacted portion is illegible. After being notified of this by the court, Plaintiffs' counsel located and submitted to the court several other copies of this document, but the redacted portion of each of these was also illegible. It appears to the court that Plaintiffs' counsel has made a good faith effort to locate a legible copy of the document. This notwithstanding, because the court did not receive a legible copy to review, the court cannot determine whether the redacted portion of the document qualifies under the claimed privilege. Rather than delay the *in camera* review any further, the court orders Plaintiffs' counsel to submit to the court and to Defendants a sworn statement indicating that Plaintiffs and their counsel have used due diligence in attempting to locate a legible copy of the document, but have been unable to do so. In addition, Plaintiffs shall produce to Defendants all copies of the document submitted to the court.

2. Plaintiffs shall produce to Defendants, in its entirety, the document identified as RFP No. 64, 11/19/96 Privilege Log Doc. No. 781, Bates No. PRIV 2323. Since RFP No. 64 and 11/19/96 Privilege Log Doc. No. 781 identify multiple Bates pages, it should be noted that

Plaintiffs are only required to produce Bates No. PRIV 2323 to Defendants—i.e., Plaintiffs are not required to produce Bates Nos. PRIV 2306-2322, 2326-2327. Bates No. PRIV 2323 appears to be a piece of mass-produced marketing material that would not be covered by the claimed privilege (work product).

3. Plaintiffs shall produce to Defendants, in its entirety, the document identified as RFP No. 133, 2/24/97 Utah Privilege Log Doc. No. 1058, Bates No. P&G 0001058. Plaintiffs originally provided this document to Defendants in redacted form, claiming that the redacted portion was covered by the attorney-client privilege. Although the redacted portion discusses the possibility of filing a lawsuit, it does so in the context of Plaintiffs' public relations efforts, not in the context of an attorney-client relationship. Indeed, the document was not authored by, sent by, or addressed to an attorney, and Plaintiffs do not claim that any of the persons identified in the document is an attorney. Further, the document does not discuss legal advice or communications made in confidence by a client to an attorney. *See United States v. Johnston*, 146 F.3d 785, 794 (10th Cir. 1998) (“In order to be covered by the attorney-client privilege, a communication between a lawyer and client must relate to legal advice or strategy sought by the client.”); *In re Grand Jury Subpoena Duces Tecum*, 697 F.2d 277, 278 (10th Cir. 1983) (stating that the attorney-client privilege “protects ‘confidential communications by a client to an attorney made in order to obtain legal assistance’ from the attorney in his capacity as a legal advisor” (citation omitted)). Accordingly, the redacted portion of the document does not qualify under the claimed privilege.

DATED this 5th day of September, 2006.

BY THE COURT:

A handwritten signature in cursive script that reads "Paul M. Warner". The signature is written in black ink and is positioned above a horizontal line.

PAUL M. WARNER
United States Magistrate Judge

United States Probation Office
for the District of Utah

Report on Offender Under Supervision

FILED
U.S. DISTRICT COURT

Name of Offender: **Guadalupe Lopez-Santiesteban**

Docket Number: **2:03-CR-00860-001-DKW**

2006 SEP -5 A 11:51

Name of Sentencing Judicial Officer: **Honorable David K. Winder**
United States District Judge

JUDICIAL DISTRICT OF UTAH

BY: _____
DEPUTY CLERK

Date of Original Sentence: **April 1, 2004**

Original Offense: **Illegal Alien in Possession of a Firearm**

Original Sentence: **10 Months Custody Bureau of Prisons; 36 Months Supervised Release**

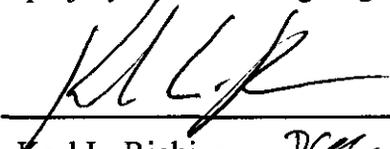
Type of Supervision: **Supervised Release** Supervision Began: **September 10, 2004**

SUPERVISION SUMMARY

The probation office is recommending unsuccessful termination of this case. The defendant has been charged in U.S. District Court for the District of Arizona with the crime of Illegal Re-entry After Deportation, a felony. Pursuant to the plea agreement in that district, should the Court terminate supervision in this district with the classification of "unsuccessful termination" the sentencing Court in Arizona will enhance the guideline range of imprisonment under Fast Track U.S.S.G. § 5K3.1 for committing the offense while on supervised release.

If the Court desires more information or another course of action, please contact me at 535-2736.

I declare under penalty of perjury that the foregoing is true and correct.



Karl L. Richins
U.S. Probation Officer
Date: August 30, 2006

THE COURT:

- Terminates the case unsuccessfully and all further proceedings.
- Denies the request noted above
- Other



Honorable David K. Winder
United States District Judge

Date: 9.5.06

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

THE SCO GROUP, INC.

Plaintiff/Counterclaim-Defendant,

v.

INTERNATIONAL BUSINESS
MACHINES CORPORATION,

Defendant/Counterclaim-Plaintiff.

ORDER AND MEMORANDUM
DECISION RE ALLEGED PRIVILEGED
DOCUMENTS

Civil No. 2:03CV0294 DAK

Honorable Dale A. Kimball

Magistrate Judge Brooke C. Wells

Before the court are the remaining issues pertaining to The SCO Group Inc.'s (SCO) Motion for *In Camera* Review of Allegedly Privileged Documents.¹ International Business Machines Corporation (IBM) recalled from its production of documents three documents after counsel for SCO had reviewed the documents and sought to use them during the course of depositions.² IBM argues that the documents are protected by the attorney-client privilege.³ Conversely, SCO argues that the documents are not privileged.⁴ Further, SCO “seeks leave to use [these] documents to depose the individuals at whose depositions SCO was precluded from

¹ Docket no. 678.

² *See* Mem. in Supp. p. 2. The court refers to these documents by the last four digits of their bates number, 33-41, 42-59, and 31-37.

³ *See* op. p. 2.

⁴ *See* Mem. in Supp. p. 8-9.

asking the witness about the documents.”⁵ SCO argues that it “should be permitted to obtain IBM’s testimony regarding the documents”⁶ because two documents concerning the Journaled File System were allegedly claimed as privileged by IBM during a Rule 30(b)(6) deposition.⁷

On June 20, 2006 the court granted SCO’s initial motion in part⁸ stating that it was reviewing the documents at issue but declining to allow SCO’s request for a contemporaneous review of the documents.⁹ On this same date, SCO filed a reply memorandum arguing for the disclosure of the declarations of Mark Walker and Sharon Dobbs that IBM submitted in support of its argument that the documents are privileged. On June 22, the court entered an order directing IBM to “provide SCO a copy of the declarations.”¹⁰ SCO filed a supplemental reply addressing the declarations on July 7.¹¹

The court having considered the parties’ arguments, relevant case law, being duly informed and having reviewed *in camera* the documents at issue, enters the following.

IBM has the burden of establishing the applicability of the attorney-client privilege.¹² “The privilege is governed by the common law and is to be strictly construed.”¹³ When a corporate client is involved there are often special problems because, “[a]s an inanimate entity, a

⁵ *Id.* p. 10.

⁶ *Id.*

⁷ Both parties make allegations concerning problems with the production of the opposing parties’ privilege logs. This issue is not before the court. The court, however, encourages both parties to use their best efforts in timely providing complete and accurate privilege logs.

⁸ Docket no. 711.

⁹ See [U.S. v. Hall, 854 F.2d 1036, 1034 \(7th Cir. 1988\)](#) (explaining the procedure for an *in camera* review of documents). Although there may be variations in method, the court is unaware of a practice that allows the opposing party to view the contested documents at the same time a court is conducting its review.

¹⁰ Order dated June 22, 2006 p. 1.

¹¹ Docket no. 720.

¹² See [In re Grand Jury Subpoenas, 144 F.3d 653, 658 \(10th Cir. 1998\)](#).

¹³ *Id.*

corporation must act through agents.”¹⁴ Finally, as noted by SCO, “Clients and their attorneys often assume, erroneously, that merely conveying something to an attorney will cloak the underlying facts from disclosure. It will not.”¹⁵ The mere fact of submitting a document to counsel for legal input will not automatically entitle it to become a protected.¹⁶

IBM argues that “[a]s demonstrated by the documents themselves and the declarations”¹⁷ each of the three documents is protected by the attorney-client privilege for four reasons. First, each document “was prepared at the request and under the direction of counsel for IBM.”¹⁸ Second, each document was prepared for counsel’s use in giving legal advice, or was to be incorporated into counsel’s legal advice and opinions.¹⁹ Third, the documents were “not used to render business advice.”²⁰ And fourth, each of the documents “was kept confidential within IBM.”²¹

Mark Walker’s declaration concerns documents 33-41 and 42-59. Allegedly, he “directed the product legal liaisons . . . to create a document to define the process and procedures to be followed by their departments to ensure the intellectual property integrity of the source code.”²² Mr. Walker states that both the documents “reflect and incorporate legal advice”²³ given by him. The “purpose of the document[s were] neither related to the provision of business

¹⁴ *Id.* (quoting [Commodity Futures Trading Comm’n v. Weintraub](#), 471 U.S. 343, 348, 105 S.Ct. 1986 (1985) (alterations in original)).

¹⁵ [Renner v. Chase Manhattan Bank](#), 2005 WL 1356192 *5 (S.D.N.Y. Nov. 2001) (quoting Edna Selan Epstein, *The Attorney-Client Privilege and the Work-Product Doctrine* 48 (4th ed. 2001)).

¹⁶ See [Burton v. R.J. Reynolds Tobacco Co.](#) 200 F.R.D. 661, 670 (D. Kan. 2001); accord [Adams v. Gateway, Inc.](#), 2003 WL 23787856 *11 (D. Utah 2003).

¹⁷ Op. p. 3.

¹⁸ *Id.*

¹⁹ See *id.*

²⁰ *Id.*

²¹ *Id.*

²² Decl. Mark Walker p. 2.

²³ Decl. Mark Walker p. 3.

advice nor to the technological improvement of the product.”²⁴ Instead, they were designed to ensure legal compliance. The documents were labeled “IBM Confidential.”²⁵ And, in both documents is a prominent statement regarding the importance of proper licensing and documentation to prevent lawsuits or code infringement.²⁶

The declaration of Sharon Dobbs shares similar characteristics to those found in Mr. Walker’s declaration. Ms. Dobbs’ declaration concerns document number 31-37, which is a summary of the Joint Development Agreement (JDA) between IBM and The Santa Cruz Operation, Inc. (Santa Cruz). Document 31-37 includes information on the issues surrounding licenses, royalties, liabilities and termination conditions for the JDA.²⁷ Ms. Dobbs states that the document was requested by her to “facilitate my legal advice.”²⁸ It was not designed for business advice, was solely for Ms. Dobbs’ use, and was not distributed to other individuals outside IBM.²⁹

In response to these declarations SCO argues that “The declarations underscore the relevance of the analysis in *Adams v. Gateway, Inc.*,³⁰ in which the court distinguished between material protected by the privilege and ‘horizontal activity . . . which had significant purposes independent of legal considerations.’”³¹ “The presence of the ‘legal purpose’ required to shield a document from discovery ‘is determined from inspection of the document.’”³² SCO continues, arguing that “if the documents here have a primary purpose other than legal advice, such as

²⁴ *Id.* p. 4.

²⁵ *Id.*

²⁶ *See id.* p.4.

²⁷ *See* Decl. Sharon Dobbs p. 2.

²⁸ *Id.*

²⁹ *See id.* p. 4.

³⁰ [2006 WL 23787856 \(D. Utah 2003\)](#).

³¹ Supp. Reply p. 2 (quoting [Adams, 2006 WL 23787856](#) at *11).

³² *Id.* (quoting [Adams, 2006 WL 23787856](#) at *11).

providing lawyer oversight of a ‘complex business challenge’ or lawyer input to a normal business document, then the privilege does not attach.”³³ According to SCO, the creation of the Journaled File System (JFS) for the projects addressed in Mr. Walker’s declaration is a business purpose. And, Mr. Walker’s activities fall under the categories of lawyer oversight or lawyer input as opposed to legal advice.³⁴

Next, in relation to Ms. Dobbs, SCO argues that Ms. Dobbs’ declaration is full of conclusory statements that allude to legal advice in only a general manner.³⁵ SCO alleges these “conclusory statements fail to satisfy IBM’s burden of establishing that the privilege is applicable with respect to the JDA summary.”³⁶

Documents 33-41 and 42-59

As noted by SCO in its pleadings, the court in *Adams v. Gateway*,³⁷ drew a distinction between materials that are protected by the attorney-client privilege and “horizontal activity . . . which had significant purposes independent of legal considerations.”³⁸ Gateway argued that its investigation into possible defects with its computers was concerned with possible litigation and not the “real world issues important to Gateway retail sales, product reliability and consumer satisfaction.”³⁹ The court rejected Gateway’s argument and found that most of the withheld documents were not privileged because notwithstanding the litigation possibilities, “Gateway’s self-interest as a retailer of computer products motivated its investigation.”⁴⁰ Thus, there was

³³ *Id.*

³⁴ *See id.* p. 3.

³⁵ *See id.*

³⁶ *Id.*

³⁷ [2001 WL 23787856](#).

³⁸ *Id.* [2006 WL 23787856](#) at *11.

³⁹ *Id.* [2006 WL 23787856](#) at 4.

⁴⁰ *Id.*

“simply too much horizontal activity in Gateway’s projects which had significant purposes independent of legal considerations”⁴¹ for the documents to be protected.

Here, the court finds that although the JFS may have a business purpose-maintaining code so that IBM may develop its business-the documents at issue concern the legal implications of that business activity. It is not uncommon in the business world for a corporation to receive legal advice about its business activities. If this type of advice could not be protected corporations would be at a significant disadvantage in conforming to the law and class action lawsuits would become more prevalent than snow on a mid winter’s day in Utah. As long as the primary purpose of such advice is a legal purpose, then such advice may be protected by the attorney-client privilege.⁴²

Based on a review of the documents, and the declaration of Mr. Walker, the court finds the documents primary purpose is for legal advice. Accordingly, the court further finds they are protected by the attorney-client privilege.

Finally, the court wishes to note that even if the court found the documents at issue to be discoverable, SCO has failed to convince this court that they could use them in redeposing a witness, or use them in some future 30(b)(6) deposition. In its opposition, IBM argues that “The two documents concerning the Journaled File System were not, as SCO claims, withdrawn as privileged during a Rule 30(b)(6) deposition: They were identified as privileged during the deposition of William Baker, a third party witness who was not at the time of his deposition nor currently an IBM employee.”⁴³ There is no evidence before the court indicating they were

⁴¹ *Id.* [2006 WL 23787856](#) at *11.

⁴² *See id.*

⁴³ *Op.* p. 3 fn. 5.

withdrawn during a 30(b)(6) deposition as SCO claims. Thus, there would be no need to obtain IBM's testimony regarding the documents.

Document 31-37

In *Upjohn Co. v. United States*,⁴⁴ the Supreme Court noted “the privilege exists to protect not only the giving of professional advice to those who can act on it but also the giving of information to the lawyer to enable him to give sound and informed advice.”⁴⁵ The court finds that document 31-37 fits within this category. It is a document prepared at the direction of an attorney to enable the attorney to give “sound and informed advice.”⁴⁶ The document is replete with information that would help Ms. Dobbs give IBM advice about the implications of the JDA between IBM and Santa Cruz. It is distinguishable from the documents ordered discoverable in *Adams v. Gateway*,⁴⁷ because it does not have “significant purposes independent of legal considerations.”⁴⁸

⁴⁴ [449 U.S. 383, 101 S.Ct. 677 \(1981\)](#).

⁴⁵ *Id.* [449 U.S. at 390](#); *see also Natta v. Hogan*, [392 F.2d 686, 692-93 \(10th Cir. 1968\)](#) (“The recognition that privilege extends to statements of a lawyer to a client is necessary to prevent the use of the lawyer's statements as admissions of the client”).

⁴⁶ *Id.*

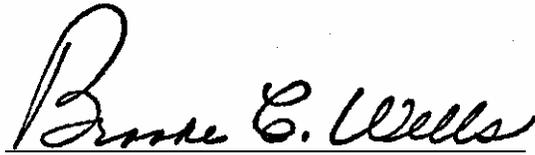
⁴⁷ [2006 WL 23787856](#) .

⁴⁸ *Id.* [2006 WL 23787856 at *11](#); *see also Sprague v. Thorn Americas, Inc.*, [129 F.3d 1355](#), 1370 (10th Cir. 1997) (concluding that a memorandum was protected by the attorney-client privilege).

Based on the foregoing, the court adopts the arguments set forth by IBM. The court finds that IBM has met its burden of establishing the applicability of the attorney-client privilege. And, the court further finds that the documents at issue are protected from disclosure by the attorney-client privilege. Therefore, the documents are not discoverable and do not need to be provided to SCO.

IT IS SO ORDERED.

DATED this 1st day of September, 2006.

A handwritten signature in black ink, reading "Brooke C. Wells". The signature is written in a cursive style with a large initial "B".

Brooke C. Wells
United States Magistrate Judge

David R. Olsen, Bar #2458
Ruth Lybbert, Bar #4904
Paul M. Simmons, Bar #4668
DEWSNUP, KING & OLSEN
2020 Beneficial Life Tower
36 South State Street
Salt Lake City, Utah 84111
Telephone: (801) 533-0400

Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

AMBER McCALLISTER, parent of
ZACHARY McCALLISTER, deceased;
CODY McCALLISTER; and ROGER G.
SEGAL, Trustee for the Bankruptcy Estates
of Cody Z. McCallister and Amber D.
McCallister,

Plaintiffs,

vs.

DOREL INDUSTRIES, INC.; DOREL
U.S.A., INC.; DOREL JUVENILE GROUP,
INC.; COSCO, INC.; and DOES I through X,

Defendants.

**ORDER FOR EXTENSION OF
TIME**

Case No. 03-CV-427 DAK

Judge: Dale A. Kimball

Based upon the Motion and Stipulation for Extension of Time and good cause appearing,

IT IS HEREBY ORDERED that the plaintiffs may have to and including Monday, September 11, 2006, to file and serve their memorandum in opposition to defendant Dorel Juvenile Group, Inc.'s Motion to Disqualify Dewsnup, King & Olsen.

DATED this 5th day of September, 2006.

BY THE COURT



DALE A. KIMBALL
UNITED STATES DISTRICT COURT JUDGE

Approved as to Form:

SNELL & WILMER L.L.P.

/s/ Kimberly Neville
Bryon J. Benevento
Kimberly Neville
Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of September, 2006, I caused a true and correct copy of the foregoing to be electronically transmitted to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing and to be mailed, first-class postage prepaid, to the following:

Bryon J. Benevento
Kimberly Neville
Snell & Wilmer L.L.P.
15 West South Temple, Suite 1200
Gateway Tower West
Salt Lake City, UT 84101-1004

Walter Greenough
Jonathan Judge
Schiff Hardin LLP
6600 Sears Tower
Chicago, IL 60606

/s/ Paul M. Simmons

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

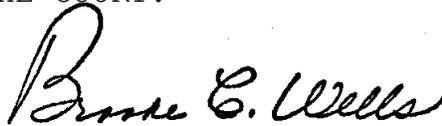
MARTIN QUINONEZ-GAITAN,)	
)	
Petitioner,)	Case No. 2:03-CV-720 TC
)	
v.)	District Judge Tena Campbell
)	
GREG JACQUERT,)	ORDER
)	
Respondent.)	Magistrate Judge Brooke Wells

Petitioner, Martin Quinonez-Gaitan, moves for an extension of time, until September 21, 2006, in which to file a reply to the State's response.

IT IS HEREBY ORDERED that Petitioner's motion is granted.

DATED this 5th day of September, 2006.

BY THE COURT:



BROOKE C. WELLS
United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

vs.

DAVID M. WOLFSON et al.,

Defendants.

ORDER

Case No. 2:03CV914 DAK

This matter is before the court on the SEC's Motion for Contempt Against Jon R. Marple and also on Jon R. Marple's Motion for Stay Pending Appeal. A hearing on the motions was held on August 29, 2006. At the hearing, Mr. Marple was represented by Richard O. Weed, and the Commission was represented by Thomas M. Melton. Before the hearing, the court considered carefully the memoranda and other materials submitted by the parties. Since taking the matter under advisement, the court has further considered the law and facts relating to the motions. Now being fully advised, the court renders the following Order.

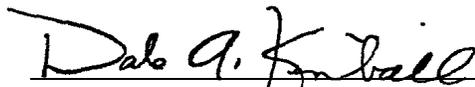
Mr. Marple has failed to demonstrate that he is unable to pay the judgment against him, and the court will not stay the judgment without an adequate supersedeas bond. The court, however, will permit Mr. Marple to chose among three options to avoid being held in contempt: (1) he may pay the full judgment against him; (2) he may obtain a stay of the judgment by posting a supersedeas bond in the full amount of the judgment, and the SEC will then remove its

lien on Mr. Maple's home; or (3) he may obtain a stay of the judgment by posting a bond in an amount equal to the difference between the judgment and Mr. Maple's share of the equity in his home (which the court understands to be approximately \$80,000), and the SEC may then maintain its lien on Mr. Maple's home.

By no later than 12:00 noon (M.S.T.) on October 2, 2006, Mr. Marple must have (1) completed all necessary steps regarding his chosen course of action, and (2) so notified the court. The SEC is directed to notify the court if Mr. Marple fails to comply by the deadline.

DATED this 31st day of August, 2006.

BY THE COURT:



DALE A. KIMBALL
United States District Judge

UNITED STATES DISTRICT COURT

Central

District of

FILED
DISTRICT COURT
Utah

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

A 11: 52

V.

Mary McMillan

Case Number: DUTX204CR000470-002

USM Number: 11698-081

DISTRICT OF UTAH
DEPUTY CLERK

Jon Williams

Defendant's Attorney

THE DEFENDANT:

- pleaded guilty to count(s) 1 of the Indictment.
- pleaded nolo contendere to count(s) _____ which was accepted by the court.
- was found guilty on count(s) _____ after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
21 U.S.C. §841(a)	Conspiracy to Manufacture Over Fifty Grams of Methamphetamine(Actual)		1

The defendant is sentenced as provided in pages 2 through 10 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- The defendant has been found not guilty on count(s) _____
- Count(s) 4 is are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

8/31/2006

Date of Imposition of Judgment

Dale A. Kimball

Signature of Judge

Dale A. Kimball

Name of Judge

U.S. District Judge

Title of Judge

Date

September 1, 2006

DEFENDANT: Mary McMillan
CASE NUMBER: DUTX204CR000470-002

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

27 months.

The court makes the following recommendations to the Bureau of Prisons:

That the defendant be incarcerated at FCI Dublin, CA and that she have the RDAP program made available to her.

The defendant is remanded to the custody of the United States Marshal.

The defendant shall surrender to the United States Marshal for this district:

at _____ a.m. p.m. on _____.

as notified by the United States Marshal.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

before 2 p.m. on 10/12/2006.

as notified by the United States Marshal.

as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Mary McMillan
CASE NUMBER: DUTX204CR000470-002

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :

36 months.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: Mary McMillan

CASE NUMBER: DUTX204CR000470-002

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall submit to drug/alcohol testing as directed by the U. S. Probation Office and pay a one-time \$115 fee to partially defray the costs of collection and testing. If testing reveals illegal drug use or excessive and/or illegal consumption of alcohol, such as alcohol-related criminal or traffic offenses, the defendant shall participate in drug and/or alcohol-abuse treatment under a copayment plan as directed by the probation office, and shall not possess or consume alcohol during the course of treatment, nor frequent businesses where alcohol is the chief item of order.
2. The defendant shall submit her person, residence, office, or vehicle to a search, conducted by the U. S. Probation Office at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release; failure to submit to a search may be grounds for revocation; the defendant shall warn any other residents that the premises may be subject to searches pursuant to this condition.

DEFENDANT: Mary McMillan
CASE NUMBER: DUTX204CR000470-002

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

- A Lump sum payment of \$ 100.00 due immediately, balance due
 - not later than _____, or
 - in accordance C, D, E, or F below; or
- B Payment to begin immediately (may be combined with C, D, or F below); or
- C Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- The defendant shall pay the cost of prosecution.
- The defendant shall pay the following court cost(s):
- The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

Pages 7 - 10

are the

Statement of Reasons,
which will be docketed
separately as a sealed
document

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

PAUL PAYNE,)	
)	
Plaintiff,)	Case No. 2:04-CV-844 DAK
)	
v.)	
)	
CLINT FRIEL et al.,)	O R D E R
)	
Defendants.)	

Plaintiff, Paul Payne, an inmate at the Utah State Prison, filed this *pro se* civil rights suit under [42 U.S.C. § 1983](#). See [42 U.S.C.A. § 1983 \(West 2005\)](#). This case was referred to the undersigned magistrate judge under [28 U.S.C. § 636\(b\)\(1\)\(B\)](#). Before the Court is Plaintiff's motion for permission to appeal and his request for recusal of the assigned District Judge.

On August 19, 2005, the Court entered an order denying Plaintiff's motion for a preliminary injunction. On October 20, 2005, Plaintiff filed his request for permission to appeal the denial of injunctive relief to the Tenth Circuit. Rule 5(a) of the Federal Rules of Appellate Procedure requires that a request for permission to appeal be filed "within the time provided by Rule 4(a) for filing a notice of appeal," which is thirty days. See Fed. R. App. P. 4(a). Plaintiff's request to appeal was filed more than sixty days after the denial of his motion for injunctive relief, and is therefore untimely. Thus, Plaintiff's motion for permission to appeal is denied.

On February 9, 2006, Plaintiff submitted to the Court a letter requesting that the District Judge assigned to this case recuse himself. Rule 7 of the Federal Rules of Civil Procedure sets forth the requirements for filing proper motions, including the requirement that motions "shall state with particularity the grounds therefor." Fed. R. Civ. P. 7(b)(1). Not only is Plaintiff's letter not a proper motion, it also does not state any grounds on which the District Judge's recusal from this case could be justified. Thus, Plaintiff's request for recusal of the assigned District Judge is stricken.

ORDER

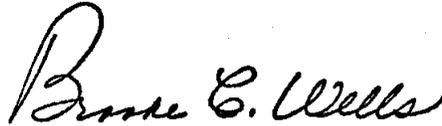
Based on the foregoing, **IT IS HEREBY ORDERED** that:

(1) Plaintiff's motion for permission to appeal is **denied**;
and,

(2) Plaintiff's letter requesting recusal of the assigned District Judge is **stricken**.

DATED this 5th day of September, 2006.

BY THE COURT:



Brooke C. Wells
United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH CENTRAL DIVISION

VICTOR JAY LIECHTY, II and GRIM
REAPER BROADHEADS, INC.,

Plaintiffs,

vs.

EASTMAN OUTFITTERS, NEW
ARCHERY PRODUCTS, INVENTIVE
TECHNOLOGY, ROCKET AEROHEADS,
BARRIE ARCHERY, LLC, and TROPHY
RIDGE

Defendants.

MEMORANDUM DECISION AND
ORDER GRANTING:
MOTION FOR RELIEF FROM COURT
ORDER; AND
GRANTING IN PART:
MOTION FOR DISCOVERY
SANCTIONS; MOTION FOR
ATTORNEYS FEES; AND EASTMAN
OUTFITTERS' MOTION TO COMPEL

Civil No. 2:04-CV-00890 DAK

District Dale A. Kimball

Magistrate Judge David Nuffer

The following motions are pending in this case:

- a. [Plaintiffs'] Motion for Relief from Court Order;¹ and
- b. Defendant Eastman Outdoors' Motion for an Award of Costs and Attorney Fees.²

If the motion for relief is granted, Defendant Eastman Outdoors' Motion for Discovery Sanctions, or in the alternative, Motion to Compel will be revived.

This order grants the motion for relief; grants the motion to compel and motion for sanctions in part; and grants the motion for costs and fees in part.

Background

On September 21, 2004, Plaintiffs initiated this lawsuit against Eastman and others.³ On January 17, 2006, Eastman served Plaintiffs with its initial interrogatories, to which Plaintiffs

¹ Docket no. 36, filed July 11, 2006

² Docket no. 39, filed July 14, 2006

³ Memorandum in Support of the Motion to Compel and Motion for Discovery Sanctions ("Supporting Memorandum") at 2; docket no. 31, filed May 16, 2006.

needed to respond by February 21, 2006.⁴ Plaintiffs did not respond in any way.⁵ Eastman made good faith efforts to obtain the answers to discovery by writing letters, sending faxes, and filing this motion.⁶ To date, Plaintiffs have not provided any response to Eastman's discovery.⁷

On May 16, 2006, after the Plaintiffs did not respond to the interrogatories, Eastman filed a motion for sanctions to dismiss the suit or, in the alternative, a motion to compel.⁸ Plaintiffs have not filed any responses or other documents with the court. On June 21, 2006, Magistrate Judge David Nuffer took Eastman's motions under advisement and warned Plaintiffs that under DUCivR7-1(d) "Failure to respond timely to a motion may result in the court's granting the motion without further notice." Plaintiffs were told that if no response was filed before June 28, 2006, the court would rule on the current state of the record.⁹

When nothing else appeared of record after that notice, the court granted the motion to compel and for sanctions in a docket text order, ordering Eastman to propose the formal order under the rules.¹⁰ Eastman submitted an order simply dismissing the case¹¹ which varied from the form of order submitted at the time the motion was made¹² and did not specify any particulars in which discovery was compelled.

Plaintiffs promptly filed a motion for relief from the court's docket text order, claiming that "[t]he parties reached a settlement agreement on or about June 12, 2006, in this matter. . . .

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ Affidavit of Kristen L. Murphy at 4, docket no. 32, filed May 16, 2006.

⁸ Eastman's Motion to Compel and Motion for Sanctions, docket no. 30, filed May 16, 2006.

⁹ Docket no. 34, filed June 21, 2006.

¹⁰ Docket no. 35, filed July 7, 2006.

¹¹ Docket no. 49, submitted July 10, 2006, lodged September 4, 2006.

¹² Docket no. 48, submitted May 16, 2006, lodged September 4, 2006.

The Plaintiffs assumed that this mooted the Motion to Compel as the settlement resolved the matter.”¹³

Eastman, however, denies that any settlement was reached. In fact, as of the latest filing in the case, Eastman still says “that an executed settlement agreement does not exist.”¹⁴ Apparently drafts were circulated (the latest including a small change requested by Plaintiffs’ counsel) but never signed.¹⁵

Plaintiffs’ counsel states that the settlement was actually reached in a meeting in May or June 2006 with Eastman’s in-house counsel.¹⁶ He states that he “proposed a modification” to the first draft and later received the second draft of “the settlement agreement with the requested change.”¹⁷ “Plaintiff respectfully requests that the court overturn its order . . . so that the parties can finalize the settlement agreement and execute the necessary stipulations to dismiss the case.”¹⁸

Discussion

Motion for Relief from Court Order

Plaintiffs’ motion for relief¹⁹ from the docket text order granting the motion to compel and motion for sanctions is granted. Given the mature discussions regarding settlement, the docket text order should be vacated. The court was not fully informed when the docket text order was entered.

¹³ Objection to Proposed Order and Motion for Relief at 1, docket no. 36, filed July 11, 2006.

¹⁴ Defendant Eastman Outdoors’ Reply Brief Supporting its Motion for an Award of Costs and Attorney Fees at 3, docket no. 47, filed August 18, 2006.

¹⁵ The drafts and cover letters are Exhibits A and B to Plaintiffs’ Motion for Relief, and were filed under seal as docket no. 46, on August 3, 2006.

¹⁶ Declaration of Wesley M. Lang at 1, attached to docket no. 42, filed July 25, 2006.

¹⁷ *Id.* at 2.

¹⁸ Reply Memorandum in Support of Objection to Proposed Order and Motion for Relief, docket no. 42, filed July 25, 2006.

¹⁹ Docket no. 36, filed July 11, 2006

Motion to Compel

The original motion to compel²⁰ should be granted, however, if settlement is not actually achieved in this case. For some reason unknown, Plaintiffs have yet to return the settlement agreement to Eastman. If the settlement agreement is not returned to Eastman, completely executed by Plaintiffs, on or before September 18, 2006, Plaintiffs must respond to the discovery subject of the motion to compel on or before September 29, 2006.

Motion for Sanctions; Motion for an Award of Costs and Attorney Fees

Similarly, the motion for sanctions²¹ and the motion for attorney fees²² will depend on the actual status of the case. At the outset, however, it is possible to exclude the possibility of a dismissal sanction.

Before sanctioning a party with dismissal, the court must consider five factors: (1) the degree of prejudice to the defendant; (2) the amount of interference with the judicial process; (3) the culpability of the litigant; (4) whether the court warned the party in advance that dismissal of the action would be a likely sanction for noncompliance; and (5) the efficacy of lesser sanctions.²³ In addition, "only when the aggravating factors outweigh the judicial system's strong predisposition to resolve cases on their merits is dismissal an appropriate sanction."²⁴ Because the Plaintiffs in the current action have not received prior warning of the likely imposition of a dismissal sanction, and because the settlement negotiations were parallel to the discovery dispute, the court will not impose a dismissal sanction.

²⁰ Docket no. 30, filed May 16, 2006.

²¹ Docket no. 30, filed May 16, 2006.

²² Docket no. 39, filed July 14, 2006

²³ [*Ehrenhaus v. Reynolds*, 965 F.2d 916, 921 \(10th Cir. 1992\)](#) (citing [*Ocelot Oil Corp. v. Sparrow Indus.*, 847 F.2d 1458, 1465 \(10th Cir. 1998\)](#)); See also [*Willner v. Univ. of Kan.*, 848 F.2d 1023, 1030 \(10th Cir. 1988\)](#).

²⁴ [*Ehrenhaus v. Reynolds*, 965 F.2d at 921](#) (citing [*Meade v. Grubbs*, 841 F.2d 1512, 1521 n.7 \(10th Cir. 1988\)](#)(citations omitted)).

However, it is entirely appropriate that Plaintiffs pay “the reasonable expenses incurred in making the motion [to compel], including attorney's fees”²⁵ if this case is not truly settled. The reasonable expenses in this motion to compel include the motion itself and the related motion for attorneys’ fees.

This table summarizes the allowable fees and expenses:

Category	Amount
Activities preparatory to filing motion ²⁶	\$309.75
Lexis-Nexis Research ²⁷	\$105.43
Activities related to the motion, after filing, before motion for relief ²⁸	\$3,490.25
TOTAL	\$3,905.43

The fees incurred after the dispute about whether the case was settled or not should not be awarded, as they are in a different phase of the case. And no fees should be awarded if the case was truly settled.

WARNING

Plaintiffs are warned that failure to comply with an order compelling discovery may result in sanctions which include dismissal of claims and monetary relief.

ORDER

IT IS HEREBY ORDERED that Plaintiffs’ motion for relief²⁹ from the docket text order granting the motion to compel and motion for sanctions is GRANTED. The docket text order (docket no. 36) is VACATED.

²⁵ [Fed. R. Civ. P. 37\(a\)\(4\)\(A\)](#).

²⁶ Declaration of Kristin L. Murphy, ¶¶ 6-11.

²⁷ *Id.* ¶ 31.

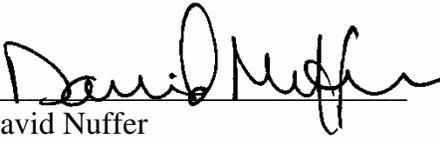
²⁸ *Id.* ¶¶ 12; 18-20; 23.

²⁹ Docket no. 36.

IT IS FURTHER ORDERED that Eastman's motion to compel;³⁰ motion for sanctions;³¹ and motion for attorney fees³² are GRANTED IN PART. In the event Plaintiffs do not supply the July 6, 2006, version of the settlement agreement – fully executed by Plaintiffs – to Eastman on or before September 18, 2006, then Eastman shall submit the form of an order that Plaintiffs pay \$3,905.43 as attorneys fees and sanctions and on or before September 29, 2006, Plaintiffs must respond to the discovery subject of the motion to compel.

Dated this 5th day of September, 2006.

BY THE COURT

A handwritten signature in black ink, appearing to read "David Nuffer", written over a horizontal line.

David Nuffer

United States Magistrate Judge

³⁰ Docket no. 30.

³¹ *Id.*

³² Docket no. 39.

David J. Jordan (1751)
Mark E. Hindley (7222)
STOEL RIVES LLP
One Utah Center
201 South Main Street, Suite 1100
Salt Lake City, Utah 84111-4904
Telephone: (801) 328-3131
Facsimile: (801) 578-6999
Attorneys for Defendants

FILED
U.S. DISTRICT COURT
2006 SEP -1 P 2:46
DISTRICT OF UTAH
BY: _____
DEPUTY CLERK

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

C&P COAL CORPORATION, a Utah
corporation,

Plaintiff,

v.

CONSOLIDATION COAL COMPANY,
CONSOL ENERGY, INC. and CNX LAND
RESOURCES, INC., all Delaware
Corporations,

Defendants.

**ORDER GRANTING MOTION TO
COMPEL**

Civil No. 2:04cv942

Judge Ted Stewart

Magistrate Judge Brooke Wells

Defendants Consolidation Coal Company, Consol Energy, Inc., and CNX Land Resources, Inc. (together "Defendants") filed a Motion to Compel on February 21, 2006 to require the production of documents and answers to interrogatories from plaintiff C&P Coal Corporation ("C&P"). The Court heard oral argument on the motion on August 22, 2006. Wade Budge of Snell & Wilmer represented C&P and David Jordan and Mark Hindley of Stoel Rives represented the Defendants.

Now, having considered the pleadings and argument by counsel, the Court orders as

follows:

1. On or before September 1, 2006, C&P shall produce a readable copy of the compact disk containing documents C&P 0000001-0041621 that was originally produced on or about January 20, 2006 on an unreadable disk.

2. On or before September 1, 2006, C&P shall make a new production of all responsive documents in this case. In making this new production, C&P shall:

- A. Bates-stamp all documents with a new prefix (e.g., "PLA").
- B. Begin the production with the first 620 pages that were produced in hard copy (and in that same order), followed by the remainder of the documents to be produced.
- C. Exclude from production any irrelevant documents
- D. Include any relevant and responsive documents that may have not yet been produced.
- E. Provide, by affidavit, a complete reconciliation between the documents that have been produced to date and the new production by listing what documents have been excluded from the new production and why, an explanation of the reasons for the overlapping and duplicative numbering in the earlier productions, and an explanation for the decrease in the total number of documents purportedly produced with C&P's counsel letter dated January 13, 2006, and subsequent productions.

3. On or before September 8, 2006 C&P shall provide the information requested in Interrogatory Nos. 3, 4, & 5, including the names of known contact people and any available telephone numbers and addresses for the entities and individuals that are called for in those Interrogatories.

4. The Court will hear oral arguments on C&P's Motion to Amend its Complaint on

UNITED STATES DISTRICT COURT

CENTRAL DIVISION

District of

FILED
3rd DISTRICT COURT
UTAH

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

V.

JOE RAKES

2006 SEP -1 A 11:04

DISTRICT OF UTAH

Case Number: DUTX 205CR000131-001

USM Number: 11423-081

Deputy Clerk
Ce

Jeremy Delicino

Defendant's Attorney

THE DEFENDANT:

pleaded guilty to count(s) _____

pleaded nolo contendere to count(s) _____
which was accepted by the court.

was found guilty on count(s) Count 2 of the Indictment
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 U.S.C. § 372	Conspiracy to Impede an Officer		2

The defendant is sentenced as provided in pages 2 through 10 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

The defendant has been found not guilty on count(s) 1 of the Indictment

Count(s) _____ is are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

8/31/2006
Date of Imposition of Judgment

[Signature]
Signature of Judge

Ted Stewart United States District
Name of Judge Title of Judge

9/1/2006
Date

DEFENDANT: JOE RAKES
CASE NUMBER: DUTX 205CR000131-001

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

63 months

The court makes the following recommendations to the Bureau of Prisons:

Incarceration in Sheridan, WY facility

The defendant is remanded to the custody of the United States Marshal.

The defendant shall surrender to the United States Marshal for this district:

at _____ a.m. p.m. on _____.

as notified by the United States Marshal.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

before 2 p.m. on _____.

as notified by the United States Marshal.

as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: JOE RAKES
CASE NUMBER: DUTX 205CR000131-001

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :

36 months

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: JOE RAKES
CASE NUMBER: DUTX 205CR000131-001

ADDITIONAL SUPERVISED RELEASE TERMS

- 1) The defendant shall maintain full-time verifiable employment or participate in academic or vocational development throughout the term of supervision as deemed appropriate by the probation office.
- 2) The defendant will submit to drug/alcohol testing as directed by the probation office, and pay a one-time \$115 fee to partially defer the costs of collection and testing.
- 3) The defendant shall participate in drug and/or alcohol abuse treatment under a copayment plan as directed by the United States Probation Office and shall not possess or consume alcohol during the course of treatment.
- 4) The defendant shall refrain from association with any known gang member.

DEFENDANT: JOE RAKES
CASE NUMBER: DUTX 205CR000131-001

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 100.00	\$	\$

The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
----------------------	--------------------	----------------------------	-------------------------------

TOTALS	\$ _____	0.00	\$ _____	0.00
---------------	----------	------	----------	------

Restitution amount ordered pursuant to plea agreement \$ _____

The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

The court determined that the defendant does not have the ability to pay interest and it is ordered that:

the interest requirement is waived for the fine restitution.

the interest requirement for the fine restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: JOE RAKES
CASE NUMBER: DUTX 205CR000131-001

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

- A Lump sum payment of \$ 100.00 due immediately, balance due
 - not later than _____, or
 - in accordance C, D, E, or F below; or
- B Payment to begin immediately (may be combined with C, D, or F below); or
- C Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- The defendant shall pay the cost of prosecution.
- The defendant shall pay the following court cost(s):
- The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

Pages 7 - 10

are the

Statement of Reasons,
which will be docketed
separately as a sealed
document

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH CENTRAL DIVISION

JENNIFER RICHARDS

Plaintiff,

v.

CONVERGYS CORPORATION,

Defendant.

MEMORANDUM DECISION AND
ORDER GRANTING MOTION TO
COMPEL AND MOTION TO EXTEND

Case No. 2:05-CV-00790-DAK

Consolidated with 2:05-CV-00812 DAK

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,
Plaintiff,

v.

CONVERGYS CORPORATION,

Defendant.

District Judge Dale A. Kimball

Magistrate Judge David Nuffer

In a telephone conference July 7, 2006,¹ the magistrate judge ordered Convergys to supplement its responses to written discovery from Plaintiffs no later than July 17, 2006 and ordered that Plaintiff Richards' deposition be rescheduled to permit Plaintiff to have the benefit

¹ Docket no. 34

of reasonable discovery responses. Unfortunately, the deficiencies continue,² and Convergys demonstrates its entrenched position in its responses to correspondence³ on the issues and in its memorandum⁴ opposing Plaintiff EEOC's motion to compel.⁵

Convergys believes it can dictate the manner in which Plaintiff takes discovery and can defer disclosure of any substantial information until expensive depositions are convened, making them less effective by reason of Plaintiff's prior lack of access to information. True, Convergys has produced 1,700 pages of documents, but it has not provided specific answers to straightforward and fundamental questions nor has it matched the voluminous production to the issues in the case as required by the EEOC's interrogatories and requests for production.

Interrogatories

Convergys says the first dispute over interrogatories is whether they are proper or "more appropriately obtained through deposition."⁶ "Generally the party seeking discovery is entitled to make an initial choice of the method by which it is to be had and the court will not interfere unless sound reasons are shown."⁷ Then, the court has "broad discretion in determining the scope and method of discovery based upon the circumstances of each case."⁸ Thus, the reported cases stand for very little other than the fit of a discovery method to a particular case.

² See Defendant's Responses to EEOC's First Set of Non-Uniform Interrogatories (Convergys' Interrogatory Responses) and Defendant's Responses to EEOC's First Request for Production of Documents (Convergys' Production Responses), attached as Exhibits A and B, respectively, to Plaintiff EEOC's Motion to Compel and for Protective Order (Motion to Compel), docket no. 37, filed July 19, 2006.

³ Letter from Catherine Reed to Sandra Padegimas, dated July 14, 2006, Exhibit E to Motion to Compel.

⁴ Defendant Convergys Corporation's Opposition to Plaintiff EEOC's Motion to Compel and for Protective Order (Opposition Memorandum), docket no. 41, filed August 4, 2006.

⁵ Docket no. 37.

⁶ Opposition Memorandum at 6.

⁷ 8 Wright, Miller & Marcus, Fed. Prac. & Proc. Civ.2d § 2039.

⁸ *Casas v. Conseco Finance Corp.* No. CIV 00-1512 (JRT/SRN) 2002 WL 246753, at *2 (D. Minn. February 15, 2002).

Examination of the interrogatories in this case shows they are well designed to prepare for a deposition. They seek to gather fundamental information to enable intelligent focus of questions to deponents. Convergys' responses to the interrogatories are so cursory and insubstantial that they do not really constitute "answers."

Interrogatory Number 8 asks Convergys to "set forth each and every reason Jennifer Richards was denied an unpaid leave of absence before her separation from employment and the individual(s) who made, had any input in, or participated in that decision."⁹ While Convergys claims it provided the name of the person who made the decision,¹⁰ it has not done so in its responses to the interrogatories. It should do so and should state the reasons Richards was denied an unpaid leave of absence. Convergys' rebuff that "[t]his interrogatory seeks a narrative answer better obtained through deposition"¹¹ is an offensive self-assertion. Convergys' letter provided after the July 7th telephone conference is not much better. Convergys states that "this interrogatory assumes facts not in evidence,"¹² apparently believing that an interrogatory must comply with rules applicable to trial interrogation. And Convergys goes on to object that this interrogatory "requires Defendant to speculate as to testimony not yet recorded."¹³ Convergys has a duty to make a reasonable inquiry for information in its possession.¹⁴

Interrogatory Number 7 states: "For each instance that Jennifer Richards received formal discipline, i.e., a write up, counseling, warning, etc., please state each and every reason for such action and identify the individuals who made, had any input in, or participated in the decision to

⁹ Convergys' Interrogatory Responses at 6.

¹⁰ Opposition Memorandum at 11.

¹¹ Convergys' Interrogatory Responses at 6.

¹² Exhibit E to Motion to Compel at 5. Exhibit E to the motion to compel is filed as docket no. 51, August 29, 2006.

¹³ *Id.*

¹⁴ Fed. R. Civ. P. 26(g)(2).

discipline Ms. Richards and, to the extent such decisions were reviewable, identify the reviewing official.”¹⁵ A written response to this question will substantially focus depositions. But Convergys provided no help, answering that “Convergys responds under [Federal Rule of Civil Procedure 33\(d\)](#).”¹⁶ That rule permits a party to produce business records in lieu of a response to an interrogatory if the responding party includes a “specification . . . in sufficient detail to permit the interrogating party to locate and to identify, as readily as can the party served, the records from which the answer may be ascertained.”¹⁷ Convergys included no such specification. Convergys’ reference to Rule 33(d) is stricken and it may not rely on that rule in any further responses to any interrogatories in this case.

Interrogatory Number 6 asks Convergys to “describe in detail the process by which Convergys established rates of pay for employees who worked at Convergys' Murray, Utah facility during the time Ms. Richards was employed by Convergys, including, but not limited to, the job title(s) of the individuals with the authority to establish such rates of pay and, if their decisions were reviewable, the title (s) of the reviewing official.”¹⁸ This question as stated is very broad, given the presence of 2,500 employees at the Murray facility.¹⁹ However, the interrogatory should be answered when limited to members of the Channels Team.

Interrogatory Number 5 asks Convergys to identify “the individuals who made, had input into, are [sic] participated in the decision to deny Jennifer Richards the bonus in or about

¹⁵ Convergys’ Interrogatory Responses at 5.

¹⁶ *Id.* at 6.

¹⁷ [Fed. R. Civ. P. 33\(d\)](#).

¹⁸ Convergys’ Interrogatory Responses at 6.

¹⁹ Opposition Memorandum at 10.

December, 2002 and describe in detail each and every reason for that decision.”²⁰ Convergys’ answer says it knows something but will not tell what it knows: “Convergys cannot currently respond to this question because the person (or people) who made this decision does not work for Convergys.”²¹ Plaintiff is entitled to a straightforward answer to the question. Convergys’ offer to provide a 30(b)(6) representative²² is not sufficient because that designation will be of one person and will not identify, before depositions, all persons involved and the reasons for the decision.

Interrogatory Number 4 states: “Please state each and every reason for the disparity in pay between Jennifer Richards and Nick Brooks during the time they both worked on the Channel [sic] Team and, if you contend that the two did not perform the [sic] substantially similar duties, state with specificity the duties each performed.”²³ Convergys again responds that “[t]his interrogatory seeks a narrative answer better obtained through deposition.”²⁴ But this question is the heart of the case and the EEOC is entitled to an answer; to a statement of Convergys’ position.

All the foregoing interrogatories are sound attempts to focus the case, by determining Convergys’ position and the persons within Convergys who have knowledge. The interrogatories are not overly broad or burdensome in an objectionable way. The only burden is that they require a clear statement of Convergys’ contentions. That burden is legitimate, and a sound predicate to depositions.

²⁰ Convergys’ Interrogatory Responses at 5.

²¹ *Id.*

²² Exhibit E to Motion to Compel at 5.

²³ Convergys’ Interrogatory Responses at 4.

²⁴ *Id.*

Similarly, Interrogatory Number 3 is a helpful inquiry designed to move the case along. “Please identify any person having any information pertaining to the allegations contained in the Complaint or the denials, partial denials, or defenses raised in the Answer, and provide a brief narrative of that testimony or knowledge of the witness.”²⁵ While “Convergys responded to this Interrogatory by directing the EEOC to its Rule 26 Disclosures,”²⁶ those disclosures are not required to have a brief summary of the testimony or knowledge of witnesses. This interrogatory is not burdensome or invasive and will focus depositions. Identification of these individuals and the areas of their knowledge is particularly important because Convergys apparently relied on only one person to prepare the interrogatory responses, and relied on no one else for supporting information.²⁷ It is hard to believe Convergys’ contention that it is “baffled as to why the EEOC is not satisfied with [Convergys’] response.”²⁸

Interrogatory No. 2 was in dispute but has been substantially answered by correspondence between counsel.²⁹ Plaintiff is, however, entitled to have those answers (with the others required by this order) in the form required by [Fed. R. Civ. P. 33\(b\)\(2\)](#) signed by a party representative.

²⁵ *Id.*

²⁶ *Id.*

²⁷ Answer to Interrogatory No. 1, Convergys’ Interrogatory Responses at 3.

²⁸ Memo 41 at 5.

²⁹ Exhibit E.

Requests for Production

The EEOC objects that Convergys has failed “to identify specifically the Bates number of the responsive documents” delivered on the requests for production.³⁰ Convergys claims that it has produced the estimated 1,790 pages³¹ of documents as they were kept in the ordinary course of business, which satisfies [Fed. R. Civ. P. 34\(b\)](#).³² However, that rule requires that a producing party “explain the origin of any . . . categories of documents, i.e. where these documents were maintained or who maintained them, and whether the documents in each category came from one single source or file or from multiple sources or files.”³³ If a party fails to make provenance clear at the time of production, it is appropriate to require the party to “identify, by the Bates Numbers . . . already stamped on the documents, which documents are responsive to each of the document requests”³⁴ If there are no documents responsive to a request, the supplemental response shall so state.

Request No. 6

Request No. 6 seeks documents that reflect the names, sex, job titles, and rates of pay for each member of the Channels Team during Richards’ tenure on the team. Convergys objects that there were team members who did not hold the precise position of Tech Lead that was held by

³⁰ Plaintiff EEOC’s Memorandum in Support of Motion to Compel and Protective Order (Supporting Memorandum) at 11, attachment no. 1 (aka Part 2), docket no. 37, filed July 19, 2006. [The court’s electronic filing system (CM/ECF) has the unfortunate quirk of assigning two different numbers to each document filed when attachments are used. Attachment numbers show on the docket sheet and Part numbers show on the Document Selection Menu. While several courts have requested that this be changed, the confusion continues as of this date.]

³¹ Supporting Memorandum at 12.

³² Opposing Memorandum at 12.

³³ [Cardenas v. Dorel Juvenile Group, Inc.](#), 230 F.R.D. 611, 618 (D. Kan. 2005).

³⁴ *Id.* at 618-19.

Ms. Richards. While it may be true that this information may not be admissible, it is within the scope of [Fed. R. Civ. P. 26\(b\)\(1\)](#), and should be produced.

Request No. 8

Request No. 8 seeks documents that “reflect any write up or counseling of any [Convergys] employee regarding any performance issues by Defendant at its Murray, Utah facility during the time January 1, 2002 until the date of Jennifer Richards’ termination.” Convergys has 2500 employees at the facility in question, so the scope of response will be limited to write-up or performance counseling by a person involved in supervision, discipline or compensation decisions for Ms. Richards.

Other Requests

Convergys has not argued any of its objections to producing documents in response to Requests 2, 3 and 9-13. The identification of documents by Bates numbers (or statement that there are no responsive documents) should develop the record so that Plaintiff can know what Convergys claims not to possess.

Motion to Extend

Plaintiff EEOC and Richards jointly moved to extend the discovery deadline to December 15, 2006 from the present deadline of September 15, 2006.³⁵ While no mention was made of the dispositive motion deadline (set October 31, 2006), Convergys objects that “the extension . . . does not allow five months between the Motion for Summary Judgment and

³⁵ Plaintiffs’ Motion to Extend Time to Conduct Discovery, docket no. 43, filed August 11, 2006.

trial.”³⁶ Nonetheless, Convergys offered to extend discovery until November 1, 2006, noting that pre-existing litigation plans and holiday schedules limit Convergys’ counsel’s ability to travel after November 15, 2006.³⁷ The discovery and dispositive motion deadlines can be extended to November 17, and December 1, 2006, without affecting the trial and related dates. The extension is needed because of the discovery difficulties.

ORDER

IT IS HEREBY ORDERED that the motion to compel and for protective order (docket no. 37) is GRANTED IN PART in that

- a. Convergys shall answer discovery as required in this order within ten days; and
- b. The deposition of Plaintiff Richards shall be deferred until Convergys provides the ordered discovery.

IT IS FURTHER ORDERED that the motion to extend (docket no. 43) is GRANTED IN PART. Fact discovery shall be completed on or before November 17, 2006, and dispositive motions shall be filed on or before December 1, 2006.

Dated this 05th day of September, 2006.

BY THE COURT



David Nuffer
United States Magistrate Judge

³⁶ Defendant’s Memorandum in Opposition to Plaintiffs’ Motion to Extend Time to Conduct Discovery at 2, docket no. 49, filed August 23, 2006. Convergys is referring to the court’s policy that “five months must be allowed between the dispositive motion deadline and the trial date to allow the motions to be filed, briefed, set, argued and decided before trial preparation starts. A motion or stipulation that does not leave this amount of time will likely not be granted.” <http://www.utd.uscourts.gov/documents/ipt.html> (last visited September 5, 2006).

³⁷ Defendant’s Memorandum in Opposition to Plaintiffs’ Motion to Extend Time to Conduct Discovery at 2.

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

FILED
U.S. DISTRICT COURT

2006 SEP -5 A 10: 23

AMERICAN ATHEISTS, INC., *et al.*,

Plaintiffs,

vs.

COLONEL SCOTT T. DUNCAN, *et al.*,

Defendants,

UTAH HIGHWAY PATROL ASSOCIATION,

Intervenor-Defendant.

Case No.: 02:05-CV-00994 DS

**ORDER DENYING PLAINTIFFS'
MOTION FOR JUDGMENT ON
THE PLEADINGS**

Judge David Sam

Plaintiffs moved this Court for judgment on the pleadings, and all the parties were heard on the motion on August 3, 2006, at 10:00 a.m. before the Honorable David Sam. Appearing for the Plaintiff was Brian M. Barnard, attorney at law. Appearing for the Defendants was Thom D. Roberts, Assistant Attorney General. Appearing for the Intervenor-Defendant Utah Highway Patrol Association was Byron J. Babione, Senior Legal Counsel with the Alliance Defense Fund, and Frank D. Mylar, attorney at law. The Court having heard the parties' arguments and considered the papers of the parties submitted on the motion and in the record, Orders and Adjudges that the motion for judgment on the pleadings is denied based on the following grounds:

1. Plaintiffs' motion for judgment on the pleadings under Rule 12(c) is improper.
2. Plaintiffs' motion is properly that of a motion to strike under Rule 12(f).
3. Plaintiffs' motion must therefore be denied as untimely under Rule 12(f).

4. Alternatively, Plaintiffs' motion is denied on the merits, as Plaintiffs have not carried their burden under 12(f).

SO ORDERED.

DATED this 5th day of September, 2006.



David Sam
Senior Judge
United States District Court

FILED
U.S. DISTRICT COURT
2006 SEP -1 A 11: 09

DISTRICT OF UTAH

BY: _____
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF UTAH, CENTRAL DIVISION

IN RE

REAL PROPERTY LOCATED AT
[REDACTED] JUPITER DRIVE, SALT
LAKE CITY, UTAH,

and

REAL PROPERTY LOCATED AT
[REDACTED] SOUTH LEDGEMONT
DRIVE, SALT LAKE CITY, UTAH.

ORDER CONFIRMING SALE

Honorable Dee V. Benson

Case No. 2:05-cv-01013-DB

This matter comes before the Court for a confirmation of the sale of property held in this Receivership Estate, pursuant to 28 U.S.C. § 2001(b), as sought by the Receiver's Motion dated June 27, 2006. The Court previously entered an Order Approving Sale on July 26, 2006, also pursuant to § 2001(b). Based on the foregoing, and for good cause appearing, the Court now hereby ORDERS, ADJUDGES, and DECREES as follows:

1. The property held in this Receivership Estate consists of a house at 4646 Jupiter Drive, Salt Lake City, Utah, also known as Lot 1551, Mt. Olympus Hills No. 15, Tax ID No. 22-01-308-044 (the "**House**"), and two parcels of vacant land adjacent to the House constituting approximately 11 acres and identified by Tax ID Nos. 22-01-352-020 and 22-01-352-024 (the "**Land**"), which are presently recorded in the name of Baylor S. Stevens. One parcel is jointly recorded in the name of Sarah Goldberg.

2. More specifically, the House, which includes a right-of-way benefitting the Land, is described in that certain Warranty Deed recorded in the Office of the Salt Lake County Recorder as Entry No. 8851406, at Book 8896, Page Nos. 853-854. The Land consists of real property as described in that certain Warranty Deed recorded in the Office of the Salt Lake County Recorder as Entry No. 9243542, at Book 9070, Page Nos. 3524-3525, and also in that certain Warranty Deed recorded in the Office of the Salt Lake County Recorder as Entry No. 9243543, at Book 9070, Page Nos. 3526-3527.

3. The legal description for the Land is identified as Parcels 1 and 2 below, and the House is described as Parcels 3 and 4:

PARCEL 1:

ALL THAT PORTION OF LOT 4, SKYLINE HILLS SUBDIVISION, according to the official plat thereof, on file and of record in the office of the Salt Lake County Recorder, described as follows:

BEGINNING AT THE SOUTHWEST CORNER OF SECTION 1, TOWNSHIP 2 SOUTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN; AND RUNNING THENCE 342.95 FEET; THENCE NORTH 21° 53' 12" EAST 708.079 FEET; THENCE NORTH 31° 30' 00" EAST 40.785 FEET; THENCE SOUTH 77° 25' 00" EAST 100.00 FEET; THENCE SOUTH 29° 44' 38" WEST 1142.787 FEET TO A POINT ON THE SOUTH LINE OF SAID LOT 4; THENCE WEST 158.846 FEET TO THE SOUTHWEST CORNER OF SAID LOT 4; THENCE NORTH 322.195 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

PARCEL 2:

BEGINNING NORTH 732.789 FEET AND EAST 355.223 FEET FROM THE SOUTHWEST CORNER OF SECTION 1, TOWNSHIP 2 SOUTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN; SAID POINT ALSO BEING THE SOUTHWEST CORNER OF LOT 1551 MT. OLYMPUS HILLS NO. 15, AND RUNNING THENCE SOUTH 21° 45' WEST 332.1 FEET; THENCE NORTHWESTERLY 340 FEET MORE OR LESS TO A POINT 30 FEET SOUTHWESTERLY FROM THE SOUTHWEST CORNER

OF LOT 615, OAKCLIFF PARK NO. 6, THENCE SOUTHWESTERLY ALONG A CURVE TO THE RIGHT 2.07 FEET; THENCE SOUTHWESTERLY ALONG A CURVE TO THE LEFT 72.1 FEET; THENCE SOUTH 30° 35' WEST 253.62 FEET; THENCE SOUTH 59° 25' 00" EAST 130.00 FEET; THENCE SOUTH 30° 35' 00" WEST 90.00 FEET; THENCE SOUTH 59° 25' EAST 170 FEET; THENCE SOUTH 30° 35' WEST 130 FEET MORE OR LESS; THENCE EASTERLY ALONG THE SECTION LINE 417.732 FEET, MORE OR LESS; THENCE NORTH 21° 53' 12" EAST 708.079 FEET TO THE SOUTHEAST CORNER OF LOT 1551 MT. OLYMPUS HILLS NO. 15 SUBDIVISION; THENCE NORTH 73° 15' WEST 262.83 FEET TO THE POINT OF BEGINNING.

PARCEL 3:

Lot 1551, MT OLYMPUS HILLS NO. 15, according to the official plat thereof, as recorded in the office of the Salt Lake County Recorder.

PARCEL 4:

A NON-EXCLUSIVE RIGHT OF WAY FOR INGRESS AND EGRESS PURPOSES APPURTENANT TO PARCEL 3, AS ESTABLISHED BY THAT CERTAIN QUIT CLAIM DEED RECORDED APRIL 14, 1986 AS ENTRY NO. 4229401 IN BOOK 5755 AT PAGE 1363 OF THE OFFICIAL RECORDS, DESCRIBED AS FOLLOWS;

BEGINNING AT THE NORTHWEST CORNER OF LOT 1550, MOUNT OLYMPUS HILLS NO. 15 SUBDIVISION, ACCORDING TO THE OFFICIAL PLAT THEREOF, ON FILE IN THE OFFICE OF THE SALT LAKE COUNTY RECORDER, AND RUNNING THENCE ALONG THE ARC OF A 45.00 FOOT RADIUS CURVE TO THE LEFT (RADIUS BEARS NORTH 31° 30' 00" EAST) A DISTANCE OF 11.97 FEET THROUGH A CENTRAL ANGLE OF 15° 14' 37"; THENCE SOUTH 30° 48' 57" WEST 135.76 FEET; THENCE SOUTH 24° 47' 57" WEST 140.06 FEET; THENCE NORTH 65° 12' 03" WEST 30.00 FEET; THENCE NORTH 24° 47' 57" EAST 141.63 FEET; THENCE NORTH 30° 48' 57" EAST 139.96 FEET TO A POINT ON A 45.00 FOOT RADIUS CURVE TO THE LEFT (RADIUS BEARS NORTH 55° 21' 12" EAST); THENCE ALONG THE ARC OF SAID CURVE A DISTANCE OF 18.73 FEET THROUGH A CENTRAL ANGLE OF 23° 51' 11" TO THE POINT OF BEGINNING.

PARCEL 1 TAX ID NO. 22-01-352-020
PARCEL 1 ADDRESS: 4680 SOUTH THOUSAND OAKS DRIVE,
SALT LAKE CITY, UTAH 84124

PARCEL 2 TAX ID NO. 22-01-352-024
PARCEL 2 ADDRESS: 4661 SOUTH LEDGEMONT DRIVE,
SALT LAKE CITY, UTAH, 84124

PARCEL 3 TAX ID NO. 22-01-308-044
PARCEL 3 ADDRESS: 4646 SOUTH JUPITER DRIVE
SALT LAKE CITY, UTAH, 84124

4. The Court's Order Approving Sale previously approved the terms of sale of the House and the Land to Homer Bryant (the "**Buyer**") in accordance with 28 U.S.C. § 2001(b). The Order authorized the Receiver to execute a Receiver's Deed and to place that Deed in escrow with Integrated Title Services. The Order also required the Buyer to place in escrow either the full purchase price or the earnest money offered and other evidence of ability to complete the purchase, and a letter declaring satisfaction of all conditions stated in the contract between the Buyer and the Receiver. Those items would remain in escrow anticipating this Order Confirming Sale.

5. The Court finds that, based on the Order Appointing Appraisers entered April 7, 2006, the Receiver has engaged three appraisers to appraise the House and the Land. Those appraisers are J. Martell Bodell of Bodell VanDrimmelin Appraisers, a representative of the Cook Group, and a representative of Free & Associates. Each of the approved appraisers has completed an appraisal on the House and on the Land. The purchase price for the House and the Land, as previously approved in the Court's Order Approving Sale, is greater than 2/3 of the appraised values of the House and the Land. Pursuant to this Court's Order Appointing Appraisers and 28 U.S.C. § 2001(b), the "appraised value" is determined by averaging the values rendered by the three appraisers for the House and for the Land, respectively.

6. Because the Buyer's offer did not state separate purchase prices for the House and the Land, the Court determines the allocation of the purchase price based upon the relative appraised values. The three appraisals of the House were \$1,775,000, \$1,260,000, and \$1,300,000, the average of which is \$1,445,000. The three appraisals of the Land were \$1,065,000, \$1,223,000, and \$1,300,000, the average of which is \$1,196,000. Based upon those appraised values, the relative proportions of the House and the Land to the total value are:

House:	54.7141%
Land:	45.2859%

Accordingly, the portion of the gross proceeds allocable to the sale of the House is \$1,641,423.70 and the portion allocable to the sale of the Land is \$1,358,576.30.

7. After the Order Approving Sale, the terms of sale were published as this Court directed in the *Intermountain Commercial Record*, which is a newspaper of general circulation in Salt Lake County, Utah, and more than ten days has elapsed since that publication.

8. No bona fide offer to purchase either the House or the Land has been made under conditions prescribed by this Court guaranteeing at least a 10% increase over the terms approved in the Order Approving Sale.

9. By this Order, the Court hereby confirms the sale to Homer Bryant and finds that all of the conditions prescribed by 28 U.S.C. § 2001 and the Order Approving Sale have been satisfied. The escrow may now close, with instructions to the escrow officer to deliver the Receiver's Deed to the Buyer and to deliver the purchase price to the Receiver, less commissions, closing costs, and reserves as referenced in paragraph 14 below. By this Order, the Court approves

payment of a 6% total commission to be divided between the Receiver's and the Buyer's real estate brokers as they shall agree, and also approves the payment of typical closing costs including title insurance, document fees, recording fees, etc. Such commissions and closing costs are administrative expenses of this Receivership Estate, and shall be borne by the House and the Land in proportion to their relative values as determined above.

10. This Order together with the Receiver's Deed shall constitute evidence of title to the House and the Land being vested in the Buyer as Grantee, in fee simple absolute, and by this Order the Court divests all rights of ownership held by Baylor S. Stevens and Sarah Goldberg.

11. The Court hereby permanently enjoins all parties and claimants to this proceeding and any other persons or entities from interfering with the Buyer's title to and quiet possession of the House and the Land.

12. A certified copy of this Order and the Receiver's Deed shall be recorded in the Office of the Salt Lake County Recorder as evidence of the transfer of title referenced herein.

13. Thereupon, title shall transfer to Homer Bryant free and clear of all liens and encumbrances, including the claims of any claimants asserting ownership or lienhold interests. All such ownership or lienhold claims shall be transferred to the proceeds of sale with the same priority, character, rank, and dignity as they bore to the House and/or the Land prior to the sale, if any.

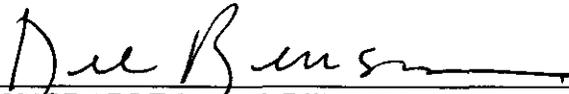
14. By this Order, the Court reserves to the Receiver the authority to address all claims as contemplated by the Order Authorizing Claims Proceeding, including the authority to pursue claims, if any, against a neighboring landowner for acts or omissions which may have a bearing upon the claim of any claimant, which may have caused damages to or encroached upon the

Land or the House, or which have caused or may cause loss or expense to the Receivership Estate. The Court authorizes the Receiver in his discretion to reserve in escrow at the time of closing an amount sufficient to remedy potential damages to the property as necessary to preserve the sale to the Buyer.

IT IS SO ORDERED.

DATED this 31st day of August, 2006.

BY THE COURT:



HONORABLE DEE V. BENSON
UNITES STATED DISTRICT COURT JUDGE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing instrument was sent via e-mail and was mailed, first-class, postage prepaid, on this 17th day of August, 2006, to the following:

Barbara Bearnson, Esq. U.S. ATTORNEY'S OFFICE 185 South State, Suite 400 Salt Lake City, UT 84111 <i>Assistant United States Attorney</i>	Robert L. Steele, Esq. FEDERAL PUBLIC DEFENDER'S OFFICE 46 West Broadway, Suite 110 Salt Lake City, UT 84101 <i>Attorneys for Baylor S. Stevens</i>
Diane H. Banks, Esq. Robert J. Dale, Esq. FABIAN & CLENDENIN 215 South State, #1200 Salt Lake City, UT 84111 <i>Attorneys for Lighthouse Capital Funding, Inc.</i>	David P. Hirschi, Esq. Lloyd E. Allen, Esq. HIRSCHI CHRISTENSEN PLLC 136 East South Temple, #850 Salt Lake City, UT 84111 <i>Attorneys for Stewart Title Guaranty Co.</i>
Thomas J. Erbin, Esq. PRINCE, YEATES & GELDZAHLER City Centre I, Suite 900 175 East 400 South Salt Lake City, UT 84111 <i>Attorneys for Lighthouse Capital Funding, Inc.</i>	Harold C. Verhaaren, Esq. Joshua W. Martin, Esq. NIELSEN & SENIOR, P.C. The 53rd Park Plaza, Suite 400 5217 South State Street Salt Lake City, UT 84107 <i>Attorneys for Weenig Management, Inc.</i>
Daniel J. Torkelson, Esq. Leslie Van Frank, Esq. COHNE RAPPAPORT & SEGAL 257 East 200 South, #700 Salt Lake City, UT 84111 <i>Attorneys for Bank of Idaho, Trustee, Clark Real Estate Company, Heights, Inc., and Loan One, LLC</i>	Ronald G. Russell, Esq. Royce B. Covington, Esq. PARR WADDOUPS BROWN GEE & LOVELESS 185 South State Street, Suite 1300 P.O. Box 11019 Salt Lake City, UT 84147-0019 <i>Attorneys for Washington Mutual Bank</i>

AND

I HEREBY CERTIFY that a true and correct copy of the foregoing instrument was mailed, first-class, postage prepaid, on this 17th day of August, 2006, to the following:

James E. Ackerman 1044 Louise Meadow Drive South Jordan, UT 84095	Cris S. Stevens 2221 East Oak Lane Layton, UT 84040
Justin Manning 1682 North Stayner Drive Farmington, UT 84025	Johnny T. Jackson 553 North Seven Peaks Blvd., #33 Provo, UT 84606
Melanie A. Comerio 2640 B Murray Holladay Rd Holladay, UT 84117	Charles and Alesha M. Higgins 1175 Canyon Rd, Ste. 10 Ogden, UT 84404
Jeremy Layton 1383 West 2300 South Woods Cross, UT 84087	Travis Manning 1891 East Crandall Circle Salt Lake City, UT 84106
Ronald T. Stevens 2892 East 7320 South Salt Lake City, UT 84121	Burk Stevens 2180 East View Drive South Weber, UT 84405
William T. Levitt 812 East 2100 South Salt Lake City, UT 84106	Matt Lemmon 2276 Hannibal Street Salt Lake City, UT 84106
Clyde W. Stevens 1868 North Kingston Farmington, UT 84025	

AND

I HEREBY CERTIFY that a true and correct copy of the foregoing instrument was mailed, first-class, certified return-receipt requested, postage prepaid, on this 18th day of August, 2006, to the following:

Sarah Goldberg
P.O. Box 17602
Salt Lake City, UT 84117

Sarah Goldberg
8150 South Stone Hill Lane
Salt Lake City, UT 84121

/s/ Matthew C. Barneck

FILED

AUG 24 2006

United States District Court
District of Utah **BERT T. BRAITHWAITE**
U.S. MAGISTRATE

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

vs.

Andrew M. Robinson

Case Number: **2:06-cr-00277-001**

Plaintiff Attorney: **Paul Graf**

Defendant Attorney: **Pro Se**

Date of Imposition: August 24, 2006

THE DEFENDANT:

COP
Date

Verdict

pleaded guilty to count(s)

Count I and Count II

pleaded nolo contendere to count(s)
which was accepted by the court.

was found guilty on count(s)

Title & Section

21 USC 844
18:13-9999

Nature of Offense

Possession of a controlled substance
Minor in possession of alcohol

**Count
Number(s)**

I
II

The defendant has been found not guilty on count(s) count _____

Count(s) _____ (is)(are) dismissed on the motion of the United States.

SENTENCE

On May 1, 2006, the court entered an order of Probation under 18 U.S.C. 3607, and the defendant signed a consent that should he "violate any conditions of probation, the court may enter a judgment of conviction."

On August 24, 2006, the defendant admitted violating the terms of probation. Therefore, an order of conviction is entered in this case.

The defendant is placed on Probation for a term of **12 months supervised**.

The defendant shall not commit another federal, state or local crime.

The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of placement on probation and at least two periodic drug tests thereafter.

Defendant: Andrew M. Robinson
Case Number: 2:06-cr-00277-001

The above drug testing condition is suspended based on the court's determination that the defendant possesses a low risk of future substance abuse. (Check if applicable.)

The defendant shall not possess a firearm, destructive device, or any other dangerous weapon.

If this judgment imposes a fine or a restitution obligation, it shall be a condition of supervised release/probation that the defendant pay any such fine or restitution in accordance with the Schedule of Payments set forth in the Criminal Monetary Penalties section of this judgment.

The defendant shall comply with the standard conditions that have been adopted by this court (set forth below). The defendant shall also comply with the additional conditions in this judgment.

STANDARD CONDITIONS OF SUPERVISED RELEASE/PROBATION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

SPECIAL CONDITIONS OF SUPERVISED RELEASE / PROBATION

Defendant: Andrew M. Robinson
Case Number: 2:06-cr-00277-001

In addition to all Standard Conditions of Supervised Release or Probation set forth above, the following Special Conditions are imposed:

1. The Defendant shall not use or possess drugs..
2. The Defendant shall submit to drug/alcohol testing, as directed by the probation office, and pay a one-time \$115 fee to partially defer the costs of collection and testing. If deemed appropriate by the Court and the probation office, the defendant will pay additional costs associated with confirmation and testing of positive results reported to the Court.
3. The Defendant shall submit to the search of his/her person, residence, office or vehicle under his/her control, by a U.S. Probation Officer or any other authorized person under the immediate and personal supervision of the U.S. Probation Officer, without a search warrant, to ensure compliance with all conditions of release, at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release.

CRIMINAL MONETARY PENALTIES

FINE

The defendant shall pay a fine in the amount of \$ 1435.00, payable as follows:

- forthwith.
- in accordance with the Bureau of Prison's Financial Responsibility Program while incarcerated and thereafter pursuant to a schedule established by the U.S. Probation office, based upon the defendant's ability to pay and with the approval of the court.
- in accordance with a schedule established by the U.S. Probation office, based upon the defendant's ability to pay and with the approval of the court.
- other:
as directed by probation department

- The defendant shall pay interest on any fine more than \$2,500, unless the fine is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. § 3612(f).
- The court determines that the defendant does not have the ability to pay interest and pursuant to 18 U.S.C. § 3612(f)(3), it is ordered that:
- The interest requirement is waived.
- The interest requirement is modified as follows:
-

RESTITUTION

The defendant shall make restitution to the following payees in the amounts listed below:

<u>Name and Address of Payee</u>	<u>Amount of Loss</u>	<u>Amount of Restitution Ordered</u>
----------------------------------	-----------------------	--------------------------------------

Defendant: Andrew M. Robinson
Case Number: 2:06-cr-00277-001

Totals: \$ _____ \$ _____

(See attachment if necessary.) All restitution payments must be made through the Clerk of Court, unless directed otherwise. If the defendant makes a partial payment, each payee shall receive an approximately proportional payment unless otherwise specified.

Restitution is payable as follows:

in accordance with a schedule established by the U.S. Probation Office, based upon the defendant's ability to pay and with the approval of the court.

other:

The defendant having been convicted of an offense described in 18 U.S.C. § 3663A(c) and committed on or after 04/25/1996, determination of mandatory restitution is continued until _____ pursuant to 18 U.S.C. § 3664(d)(5) (not to exceed 90 days after sentencing).

An Amended Judgment in a Criminal Case will be entered after such determination

SPECIAL ASSESSMENT

The defendant shall pay a special assessment in the amount of \$ 50.00, payable as follows:

forthwith.

as directed by probation department

PRESENTENCE REPORT / OBJECTIONS

The court adopts the factual findings and guideline application in the presentence report.

The court adopts the factual findings and guideline application in the presentence report, except as set forth below:

Guideline Range Determined by the Court:

Total Offense Level: _____

Criminal History Category: _____

Imprisonment Range: _____ to _____ months

Supervised Release Range: _____ to _____ years

Fine Range: _____ to _____

RECOMMENDATION

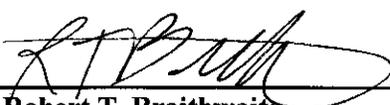
Pursuant to 18 U.S.C. § 3621(b)(4), the Court makes the following recommendations to the Bureau of Prisons:

Defendant: Andrew M. Robinson
Case Number: 2:06-cr-00277-001

CUSTODY/SURRENDER

- The defendant is remanded to the custody of the United States Marshal.
- The defendant shall surrender to the Washington County Correctional Facility at Purgatory at _____ on _____.
- The defendant shall report to the _____ institution designated by the Bureau of Prisons by _____ Institution's local time, on _____.

DATE: 8-24-06



Robert T. Braithwaite
United States Magistrate Judge

FILED

AUG 28 2006

United States District Court
District of Utah
ROBERT T. BRAITHWAITE
U.S. MAGISTRATE

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

vs.

Dee A. Henshaw

Case Number: **2:06-cr-0396-001**

Plaintiff Attorney: **Paul Graf**

Defendant Attorney: **Pro Se**

Date of Imposition: August 13, 2006

DEFENDANT:

pleaded guilty to count(s)

Count I

Title & Section

Nature of Offense

Count Number(s)

43 CFR 4140.1(b)(1)(ii)

Allow Livestock on public lands without a permit

I

Count(s) _____ (is)(are) dismissed on the motion of the United States.

The Defendant is placed on bench probation for a period of 5 months. The Defendant shall pay fine and fees in full on or before the expiration of the probation period.

CRIMINAL MONETARY PENALTIES

TOTAL FINE: Count I: \$ 400.00

ASSESSMENT: Count I: \$ 25.00

Due by January 5, 2007

8-28-06

Date



Robert T. Braithwaite, United States Magistrate Judge
Name and Title of Judicial Officer

United States District Court

NORTHERN DISTRICT OF UTAH

UNITED STATES OF AMERICA
v.

**ORDER SETTING
CONDITIONS OF RELEASE**

FILED IN UNITED STATES DISTRICT COURT DISTRICT OF UTAH
SEP 05 2006
By MARKUS B. ZIMMER, Clerk
DEPUTY CLERK

Sandra E. Price

Case Number: 2:06cr562 TC

IT IS SO ORDERED that the release of the defendant is subject to the following conditions:

- (1) The defendant shall not commit any offense in violation of federal, state or local or tribal law while on release in this case.
- (2) The defendant shall immediately advise the court, defense counsel and the U.S. attorney in writing of any change in address and telephone number.
- (3) The defendant shall appear at all proceedings as required and shall surrender for service of any sentence imposed

as directed. The defendant shall next appear at (if blank, to be notified)

PLACE

on

DATE AND TIME

Release on Personal Recognizance or Unsecured Bond

IT IS FURTHER ORDERED that the defendant be released provided that:

- (4) The defendant promises to appear at all proceedings as required and to surrender for service of any sentence imposed.
- (5) The defendant executes an unsecured bond binding the defendant to pay the United States the sum of

dollars (\$)

in the event of a failure to appear as required or to surrender as directed for service of any sentence imposed.

Additional Conditions of Release

Upon finding that release by one of the above methods will not by itself reasonably assure the appearance of the defendant and the safety of other persons and the community, it is FURTHER ORDERED that the release of the defendant is subject to the conditions marked below:

- (6) The defendant is placed in the custody of:
 (Name of person or organization)
 (Address)
 (City and state) (Tel.No.)

who agrees (a) to supervise the defendant in accordance with all the conditions of release, (b) to use every effort to assure the appearance of the defendant at all scheduled court proceedings, and (c) to notify the court immediately in the event the defendant violates any conditions of release or disappears.

Signed: _____

Custodian or Proxy

- (7) The defendant shall:
- (a) maintain or actively seek employment.
 - (b) maintain or commence an educational program.
 - (c) abide by the following restrictions on his personal associations, place of abode, or travel:
 - (d) avoid all contact with the following named persons, who are considered either alleged victims or potential witnesses:
 - (e) report on a regular basis to the supervising officer as directed. USPO will notify USATTY if dft misses any appt.
 - (f) comply with the following curfew:
 - (g) refrain from possessing a firearm, destructive device, or other dangerous weapon.
 - (h) refrain from excessive use of alcohol.
 - (i) refrain from any use or unlawful possession of a narcotic drug and other controlled substances defined in 21 U.S.C. §802 unless prescribed by a licensed medical practitioner.
 - (j) undergo medical or psychiatric treatment and/or remain in an institution, as follows:
 - (k) execute a bond or an agreement to forfeit upon failing to appear as required, the following sum of money or designated property
 - (l) post with the court the following indicia of ownership of the above-described property, or the following amount or percentage of the above-described money:
 - (m) execute a bail bond with solvent sureties in the amount of \$
 - (n) return to custody each (week)day as of _____ o'clock after being released each (week)day as of _____ o'clock for employment, schooling or the following limited purpose(s):
 - (o) surrender any passport to pretrial officer within 72 hours
 - (p) obtain no passport
 - (q) the defendant will submit to drug/alcohol testing as directed by the pretrial office. If testing reveals illegal drug use, the defendant shall participate in drug and/or alcohol abuse treatment, if deemed advisable by supervising officer.
 - (r) participate in a program of inpatient or outpatient substance abuse therapy and counseling if deemed advisable by the supervising officer.
 - (s) submit to an electronic monitoring program as directed by the supervising officer.
 - (t) Dft cannot use internet for any reason.
 - (u) Dft is to maintain residence and will gain permission if changes take place

Advice of Penalties and Sanctions

TO THE DEFENDANT:

YOU ARE ADVISED OF THE FOLLOWING PENALTIES AND SANCTIONS:

A violation of any of the foregoing conditions of release may result in the immediate issuance of a warrant for your arrest, a revocation of release, an order of detention, and a prosecution for contempt of court and could result in a term of imprisonment, a fine, or both.

The commission of a Federal offense while on pretrial release will result in an additional sentence of a term of imprisonment of not more than ten years, if the offense is a felony; or a term of imprisonment of not more than one year, if the offense is a misdemeanor. This sentence shall be in addition to any other sentence.

Federal law makes it a crime punishable by up to 10 years of imprisonment, and a \$250,000 fine or both to obstruct a criminal investigation. It is a crime punishable by up to ten years of imprisonment and a \$250,000 fine or both to tamper with a witness, victim or informant; to retaliate or attempt to retaliate against a witness, victim or informant; or to intimidate or attempt to intimidate a witness, victim, juror, informant, or officer of the court. The penalties for tampering, retaliation, or intimidation are significantly more serious if they involve a killing or attempted killing.

If after release, you knowingly fail to appear as required by the conditions of release, or to surrender for the service of sentence, you may be prosecuted for failing to appear or surrender and additional punishment may be imposed. If you are convicted of:

- (1) an offense punishable by death, life imprisonment, or imprisonment for a term of fifteen years or more, you shall be fined not more than \$250,000 or imprisoned for not more than 10 years, or both;
- (2) an offense punishable by imprisonment for a term of five years or more, but less than fifteen years, you shall be fined not more than \$250,000 or imprisoned for not more than five years, or both;
- (3) any other felony, you shall be fined not more than \$250,000 or imprisoned not more than two years, or both.
- (4) a misdemeanor, you shall be fined not more than \$100,000 or imprisoned not more than one year, or both.

A term of imprisonment imposed for failure to appear or surrender shall be in additions to the sentence for any other offense. In addition, a failure to appear or surrender may result in the forfeiture of any bond posted.

Acknowledgment of Defendant

I acknowledge that I am the defendant in this case and that I am aware of the conditions of release. I promise to obey all conditions of release, to appear as directed, and to surrender for service of any sentence imposed. I am aware of the penalties and sanctions set forth above.

Sandra Quice
Signature of Defendant

Address

City and State Telephone

Directions to the United States Marshal

- The defendant is ORDERED released after processing.
- The United States marshal is ORDERED to keep the defendant in custody until notified by the clerk or judicial officer that the defendant has posted bond and/or complied with all other conditions for release. The defendant shall be produced before the appropriate judicial officer at the time and place specified, if still in custody.

Date: 5 Sept 2008

Paul M Warner
Signature of Judicial Officer

Magistrate Judge Paul M. Warner

Name and Title of Judicial Officer

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH CENTRAL DIVISION

Elaine L. Chao, Secretary of Labor, United States Department of Labor,

Plaintiff,

v.

AKI Industries Inc., and Shaw Atkinson

Defendants.

SCHEDULING ORDER AND
ORDER VACATING HEARING

Case No. *2:06CV00081 DAK*

District Judge *Dale A. Kimball*

Pursuant to Fed.R. Civ P. 16(b), the Magistrate Judge¹ received the Attorneys' Planning Report filed by counsel. The following matters are scheduled. The times and deadlines set forth herein may not be modified without the approval of the Court and on a showing of good cause.

IT IS ORDERED that the Initial Pretrial Hearing set for *September 13, 2006*, at 1:30 p.m. is VACATED.

ALL TIMES 4:30 PM UNLESS INDICATED

- | 1. | PRELIMINARY MATTERS | DATE |
|----|--|----------------|
| a. | Was Rule 26(f)(1) Conference held? | <u>8/25/06</u> |
| b. | Has Attorney Planning Meeting Form been submitted? | <u>8/28/06</u> |
| c. | Was 26(a)(1) initial disclosure completed? | <u>10/6/06</u> |
| 2. | DISCOVERY LIMITATIONS | NUMBER |
| a. | Maximum Number of Depositions by Plaintiff(s) | <u>5</u> |
| b. | Maximum Number of Depositions by Defendant(s) | <u>10</u> |
| c. | Maximum Number of Hours for Each Deposition
(unless extended by agreement of parties) | <u>7</u> |
| d. | Maximum Interrogatories by any Party to any Party | <u>25</u> |
| e. | Maximum requests for admissions by any Party to any Party | <u>25</u> |

f.	Maximum requests for production by any Party to any Party		<u>25</u>
3.	AMENDMENT OF PLEADINGS/ADDING PARTIES ²		DATE
a.	Last Day to File Motion to Amend Pleadings		<u>1/30/07</u>
b.	Last Day to File Motion to Add Parties		<u>2/28/07</u>
4.	RULE 26(a)(2) REPORTS FROM EXPERTS ³		DATE
a.	Plaintiff		<u>5/31/07</u>
b.	Defendant		<u>5/31/07</u>
c.	Counter reports		<u>7/30/07</u>
5.	OTHER DEADLINES		DATE
a.	Discovery to be completed by:		
	Fact discovery		<u>4/25/07</u>
	Expert discovery		<u>7/31/07</u>
b.	<i>(optional)</i> Final date for supplementation of disclosures and discovery under Rule 26 (e)		
c.	Deadline for filing dispositive or potentially dispositive motions		<u>9/30/07</u>
6.	SETTLEMENT/ALTERNATIVE DISPUTE RESOLUTION		DATE
a.	Referral to Court-Annexed Mediation:	<u>Yes</u>	
b.	Referral to Court-Annexed Arbitration	<u>No</u>	
c.	Evaluate case for Settlement/ADR on		<u>4/31/07</u>
d.	Settlement probability:	fair	
7.	TRIAL AND PREPARATION FOR TRIAL	TIME	DATE
a.	Rule 26(a)(3) Pretrial Disclosures ⁴		
	Plaintiff		<u>12/28/07</u>
	Defendant		<u>1/11/08</u>
b.	Objections to Rule 26(a)(3) Disclosures (if different than 14 days provided in Rule)		

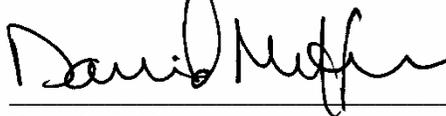
- c. Special Attorney Conference⁵ on or before 1/25/08
- d. Settlement Conference⁶ on or before 2/8/08
- e. Final Pretrial Conference 2:30 p.m. 2/22/08
- f. Trial Length
- i. Bench Trial 3 days 8:30 a.m. 3/3/08
- ii. Jury Trial

8. OTHER MATTERS

Counsel should contact chambers staff of the District Judge regarding Daubert and Markman motions to determine the desired process for filing and hearing of such motions. All such motions, including Motions in Limine should be filed well in advance of the Final Pre Trial. Unless otherwise directed by the court, any challenge to the qualifications of an expert or the reliability of expert testimony under Daubert must be raised by written motion before the final pre-trial conference.

Dated this 1st date of September, 2006.

BY THE COURT:



David Nuffer
U.S. Magistrate Judge

¹ The Magistrate Judge completed Initial Pretrial Scheduling under DUCivR 16-1(b) and DUCivR 72-2(a)(5). The name of the Magistrate Judge who completed this order should NOT appear on the caption of future pleadings, unless the case is separately referred to that Magistrate Judge. A separate order may refer this case to a Magistrate Judge under DUCivR 72-2 (b) and 28 USC 636 (b)(1)(A) or DUCivR 72-2 (c) and 28 USC 636 (b)(1)(B). The name of any Magistrate Judge to whom the matter is referred under DUCivR 72-2 (b) or (c) should appear on the caption as required under DUCivR10-1(a).

² Counsel must still comply with the requirements of Fed. R. Civ. P. 15(a).

³ A party shall disclose the identity of each testifying expert and the subject of each such expert's testimony at least 60 days before the deadline for expert reports from that party. This disclosure shall be made even if the testifying expert is an employee from whom a report is not required.

⁴ Any demonstrative exhibits or animations must be disclosed and exchanged with the 26(a)(3) disclosures.

⁵ The Special Attorneys Conference does not involve the Court. Counsel will agree on voir dire questions, jury instructions, a pre-trial order and discuss the presentation of the case. Witnesses will be scheduled to avoid gaps and disruptions. Exhibits will be marked in a way that does not result in duplication of documents. Any special equipment or courtroom arrangement requirements will be included in the pre-trial order.

⁶ The Settlement Conference does not involve the Court unless a separate order is entered. Counsel must ensure that a person or representative with full settlement authority or otherwise authorized to make decisions regarding settlement is available in person or by telephone during the Settlement Conference.

DAVID J. HOLDSWORTH (4052)
Attorney for Plaintiff
9125 South Monroe Plaza Way, Suite C
Sandy, UT 84070
Telephone (801) 352-7701
Facsimile (801) 567-9960

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

FRED RODRIGUEZ,	:	ORDER MODIFYING
	:	SCHEDULING ORDER
Plaintiff,	:	
	:	
v.	:	
	:	
JOANNE B. BARNHART,	:	
Commissioner of Social Security,	:	Civil No.: 2:06CV00290DAK
	:	
Defendant.	:	Honorable Dale A. Kimball

The Court modifies the Scheduling Order governing the disposition of this above-referenced action as follows:

1. The Administrative Record is on file.
2. Plaintiff's opening brief shall be filed on or before October 2, 2006.
3. Defendant's answer brief should be filed on or before November 3, 2006.
4. Plaintiff may file a reply brief on or before November 20, 2006.

DATED this 5th day of September, 2006.

BY THE COURT:

A handwritten signature in black ink that reads "Dale A. Kimball". The signature is written in a cursive style with a large initial 'D' and 'K'.

Honorable Dale A. Kimball
United States District Court

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH CENTRAL DIVISION

<p>Robert Bergman, et al, as Trustees of the Utah Pipe Trades Pension Trust Fund, Utah Pipe Trades Welfare Trust Fund, Utah Pipe Trades Education Trust Fund, Market Recovery Fund, and Utah State Association Fund,</p> <p style="text-align: center;">Plaintiffs,</p> <p>v.</p> <p>N. B. Plumbing & Mechanical, Inc., a Utah Corporation; and Nick C. Black, Individually,</p> <p style="text-align: center;">Defendants.</p>	<p style="text-align: center;">SCHEDULING ORDER AND ORDER VACATING HEARING</p> <p>Case No. 2:06CV00359 DB</p> <p>District Judge Dee Benson</p>
---	---

Pursuant to Fed.R. Civ P. 16(b), the Magistrate Judge¹ received the Attorneys' Planning Report filed by counsel. The following matters are scheduled. The times and deadlines set forth herein may not be modified without the approval of the Court and on a showing of good cause.

IT IS ORDERED that the Initial Pretrial Hearing set for September 13, 2006, at 9:00 a.m. is VACATED.

ALL TIMES 4:30 PM UNLESS INDICATED

1.	PRELIMINARY MATTERS	DATE
a.	Was Rule 26(f)(1) Conference held?	Yes 8/4/06
b.	Has Attorney Planning Meeting Form been submitted?	Yes 8/29/06
c.	Was 26(a)(1) initial disclosure completed?	Yes 8/21/06
	Designation of lay witnesses will be by January 20, 2007, by Plaintiffs and by January 20, 2007, by Defendants.	
2.	DISCOVERY LIMITATIONS	NUMBER
a.	Maximum Number of Depositions by Plaintiff(s)	<u>10</u>
b.	Maximum Number of Depositions by Defendant(s)	<u>10</u>
c.	Maximum Number of Hours for Each Deposition (unless extended by agreement of parties)	7

d.	Maximum Interrogatories by any Party to any Party	<u>25</u>
e.	Maximum requests for admissions by any Party to any Party	<u>25</u>
f.	Maximum requests for production by any Party to any Party	<u>50</u>
3.	AMENDMENT OF PLEADINGS/ADDING PARTIES ²	DATE
a.	Last Day to File Motion to Amend Pleadings	2/01/07
b.	Last Day to File Motion to Add Parties	2/01/07
4.	RULE 26(a)(2) REPORTS FROM EXPERTS ³	DATE
a.	Plaintiff	2/15/07
b.	Defendant	3/15/07
c.	Counter reports	4/01/07
5.	OTHER DEADLINES	DATE
a.	Discovery to be completed by:	
	Fact discovery	1/15/07
	Expert discovery	5/01/07
b.	<i>(optional)</i> Final date for supplementation of disclosures and discovery under Rule 26 (e)	
c.	Deadline for filing dispositive or potentially dispositive motions	6/01/07
6.	SETTLEMENT/ALTERNATIVE DISPUTE RESOLUTION	DATE
a.	Referral to Court-Annexed Mediation:	<u>No</u>
b.	Referral to Court-Annexed Arbitration	<u>No</u>
c.	Evaluate case for Settlement/ADR on	<u>2/01/07</u>
d.	Settlement probability:	

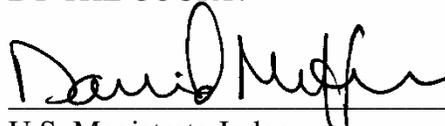
7.	TRIAL AND PREPARATION FOR TRIAL	TIME	DATE
a.	Rule 26(a)(3) Pretrial Disclosures ⁴		
	Plaintiff		<u>8/31/07</u>
	Defendant		<u>9/14/07</u>
b.	Objections to Rule 26(a)(3) Disclosures (if different than 14 days provided in Rule)		
c.	Special Attorney Conference ⁵ on or before		<u>9/28/07</u>
d.	Settlement Conference ⁶ on or before		<u>10/12/07</u>
e.	Final Pretrial Conference	2:30 p.m.	<u>10/26/07</u>
f.	Trial	<u>Length</u>	
	i. Bench Trial	<u>2 days</u>	8:30 a.m. <u>11/5/07</u>

8. OTHER MATTERS

Counsel should contact chambers staff of the District Judge regarding Daubert and Markman motions to determine the desired process for filing and hearing of such motions. All such motions, including Motions in Limine should be filed well in advance of the Final Pre Trial. Unless otherwise directed by the court, any challenge to the qualifications of an expert or the reliability of expert testimony under Daubert must be raised by written motion before the final pre-trial conference.

Dated this 1st date of September, 2006.

BY THE COURT:


 U.S. Magistrate Judge

¹ The Magistrate Judge completed Initial Pretrial Scheduling under DUCivR 16-1(b) and DUCivR 72-2(a)(5). The name of the Magistrate Judge who completed this order should NOT appear on the caption of future pleadings, unless the case is separately referred to that Magistrate Judge. A separate order may refer this case to a Magistrate Judge under DUCivR 72-2 (b) and 28 USC 636 (b)(1)(A) or DUCivR 72-2 (c) and 28 USC 636 (b)(1)(B). The name of any Magistrate Judge to whom the matter is referred under DUCivR 72-2 (b) or (c) should appear on the caption as required under DUCivR10-1(a).

² Counsel must still comply with the requirements of Fed. R. Civ. P. 15(a).

³ A party shall disclose the identity of each testifying expert and the subject of each such expert's testimony at least 60 days before the deadline for expert reports from that party. This disclosure shall be made even if the testifying expert is an employee from whom a report is not required.

⁴ Any demonstrative exhibits or animations must be disclosed and exchanged with the 26(a)(3) disclosures.

⁵ The Special Attorneys Conference does not involve the Court. Counsel will agree on voir dire questions, jury instructions, a pre-trial order and discuss the presentation of the case. Witnesses will be scheduled to avoid gaps and disruptions. Exhibits will be marked in a way that does not result in duplication of documents. Any special equipment or courtroom arrangement requirements will be included in the pre-trial order.

⁶ The Settlement Conference does not involve the Court unless a separate order is entered. Counsel must ensure that a person or representative with full settlement authority or otherwise authorized to make decisions regarding settlement is available in person or by telephone during the Settlement Conference.

FILED
U.S. DISTRICT COURT
2006 SEP -1 P 3: 27
DISTRICT OF UTAH
DEPUTY CLERK

CHARLES L. ROBERTS (A5137)
JAMES B. BELSHE (A9826)
WORKMAN NYDEGGER
1000 Eagle Gate Tower
60 East South Temple
Salt Lake City, Utah 84111
Telephone: (801) 533-9800
Facsimile: (801) 321-1707

Attorneys for Defendant
INTERNATIONAL PIGMENT & COLOR CORPORATION

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH
NORTHERN DIVISION

NUTRACEUTICAL CORPORATION, a
Delaware corporation

Plaintiff,

v.

INTERNATIONAL PIGMENT & COLOR
CORPORATION, a Florida corporation,

Defendant.

Civil Action No. 2:06CV00455

**[PROPOSED] ORDER RE DEFENDANT
INTERNATIONAL PIGMENT'S
APPLICATION FOR WITHDRAWAL OF
COUNSEL**

The Honorable Judge Cassell

THIS MATTER is before the Court on Defendant International Pigment & Color Corporation's ("International Pigment") Application for Withdrawal of Counsel. Having considered the written submissions and pleadings of record, in connection with the above-referenced application, and good cause appearing therefore IT IS HEREBY ORDERED that Defendant's Application is GRANTED in all respects.

DATED this 20~~th~~ day of August, 2006.



Honorable Judge Cassell
United States District Court
Northern District of Utah

SUBMITTED BY:

/s/ Charles L. Roberts
Charles L. Roberts
James B. Belshe
WORKMAN NYDEGGER
1000 Eagle Gate Tower
60 East South Temple
Salt Lake City, Utah 84111

Attorneys for
International Pigment & Color Corp.
Defendants

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing **[PROPOSED]**
ORDER RE: DEFENDANT INTERNATIONAL PIGMENT'S APPLICATION
FOR WITHDRAWAL OF COUNSEL was served on this 29 day of August, 2006, a
true copy thereof to its attorneys of record:

Peggy A Tomsic (Via U.S. Mail)
Eric K. Schnibbe
Kristopher S. Kaufman
TOMSIC LAW FIRM, LLC
136 East South Temple, Suite 800
Salt Lake City, UT 84111

Mike Kafer (Via U.S. Mail)
International Pigment & Color Corporation
3187 Cecelia Drive
Apopka, Florida 32703

/s/ Bonnie Larsen

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
Central Division for the District of Utah

MARBLE POINT ENERGY LTD.,

Plaintiff,

vs.

MAJESTIC CAPITAL GROUP, LLC.,
et al.,

Defendant.

**SCHEDULING ORDER AND
ORDER VACATING HEARING**

Case No. 2:06-CV-487 PGC

District Judge Paul G. Cassell

Magistrate Judge Brooke C. Wells

Pursuant to Fed. R. Civ. P. 16(b), the Magistrate Judge¹ received the Attorneys' Planning Report filed by counsel. The following matters are scheduled. The times and deadlines set forth herein may not be modified without the approval of the Court and on a showing of good cause.

IT IS ORDERED that the Initial Pretrial Hearing set for October 11, 2006, at 2:30 p.m. is VACATED.

****ALL TIMES 4:30 PM UNLESS INDICATED****

1. PRELIMINARY MATTERS	<u>DATE</u>
Nature of claim(s) and any affirmative defenses:	
a. Was Rule 26(f)(1) Conference held?	<u>Yes</u>
b. Has Attorney Planning Meeting Form been submitted?	<u>Yes</u>
c. Was 26(a)(1) initial disclosure completed?	<u>9/8/06</u>
2. DISCOVERY LIMITATIONS	<u>NUMBER</u>
a. Maximum Number of Depositions by Plaintiff(s)	<u>20</u>
b. Maximum Number of Depositions by Defendant(s)	<u>10</u>
c. Maximum Number of Hours for Each Deposition (except Steven Gregory (16 hours) and others by agreement of parties)	<u>8</u>
d. Maximum Interrogatories by any Party to any Party	<u>25</u>
e. Maximum requests for admissions by any Party to any Party	<u>25</u>
f. Maximum requests for production by any Party to any Party	<u>40</u>

	<u>DATE</u>
3. AMENDMENT OF PLEADINGS/ADDING PARTIES²	
a. Last Day to File Motion to Amend Pleadings	<u>11/30/06</u>
b. Last Day to File Motion to Add Parties	<u>11/30/06</u>
4. RULE 26(a)(2) REPORTS FROM EXPERTS³	
a. Plaintiff	<u>2/9/07</u>
b. Defendant	<u>2/28/07</u>
c. Counter Reports	<u>3/9/07</u>
5. OTHER DEADLINES	
a. Discovery to be completed by:	
Fact discovery	<u>1/31/07</u>
Expert discovery	<u>4/13/07</u>
b. <i>(optional)</i> Final date for supplementation of disclosures and discovery under Rule 26 (e)	
c. Deadline for filing dispositive or potentially dispositive motions	<u>4/30/07</u>
6. SETTLEMENT/ ALTERNATIVE DISPUTE RESOLUTION	
a. Referral to Court-Annexed Mediation	<u>No</u>
b. Referral to Court-Annexed Arbitration	<u>No</u>
c. Evaluate case for Settlement/ADR on	
d. Settlement probability:	<u>Unknown</u>
7. TRIAL AND PREPARATION FOR TRIAL:	
a. Rule 26(a)(3) Pretrial Disclosures ⁴	
Plaintiffs	<u>7/20/07</u>
Defendants	<u>8/3/07</u>
b. Objections to Rule 26(a)(3) Disclosures (if different than 14 days provided in Rule)	
c. Special Attorney Conference ⁵ on or before	<u>8/17/07</u>
d. Settlement Conference ⁶ on or before	<u>8/31/07</u>
e. Final Pretrial Conference	<u>3:00 p.m. 9/13/07</u>

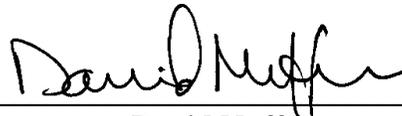
f. Trial	<u>Length</u>	<u>Time</u>	<u>Date</u>
i. Bench Trial			
ii. Jury Trial	<u>10 Days</u>	<u>8:00 a.m.</u>	<u>10/1/07</u>

8. OTHER MATTERS:

Counsel should contact chambers staff of the District Judge regarding Daubert and Markman motions to determine the desired process for filing and hearing of such motions. All such motions, including Motions in Limine should be filed well in advance of the Final Pre Trial. Unless otherwise directed by the court, any challenge to the qualifications of an expert or the reliability of expert testimony under Daubert must be raised by written motion before the final pre-trial conference.

Dated this 5th day of September, 2006.

BY THE COURT:



David Nuffer
U.S. Magistrate Judge

1. The Magistrate Judge completed Initial Pretrial Scheduling under DUCivR 16-1(b) and DUCivR 72-2(a)(5). The name of the Magistrate Judge who completed this order should NOT appear on the caption of future pleadings, unless the case is separately referred to that Magistrate Judge. A separate order may refer this case to a Magistrate Judge under DUCivR 72-2 (b) and 28 USC 636 (b)(1)(A) or DUCivR 72-2 (c) and 28 USC 636 (b)(1)(B). The name of any Magistrate Judge to whom the matter is referred under DUCivR 72-2 (b) or (c) should appear on the caption as required under DUCivR10-1(a).
2. Counsel must still comply with the requirements of Fed. R. Civ. P. 15(a).
3. A party shall disclose the identity of each testifying expert and the subject of each such expert's testimony at least 60 days before the deadline for expert reports from that party. This disclosure shall be made even if the testifying expert is an employee from whom a report is not required.
4. Any demonstrative exhibits or animations must be disclosed and exchanged with the 26(a)(3) disclosures.
5. The Special Attorneys Conference does not involve the Court. Counsel will agree on voir dire questions, jury instructions, a pre-trial order and discuss the presentation of the case. Witnesses will be scheduled to avoid gaps and disruptions. Exhibits will be marked in a way that does not result in duplication of documents. Any special equipment or courtroom arrangement requirements will be included in the pre-trial order.
6. Counsel must ensure that a person or representative with full settlement authority or otherwise authorized to make decisions regarding settlement is available in person or by telephone during the Settlement Conference.

FILED
U.S. DISTRICT COURT
2006 SEP -5 A 10: 03
DISTRICT OF UTAH
BY: _____
DEPUTY CLERK

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

<p>DENNIS SPRINGER, Plaintiff,</p> <p>vs.</p> <p>JO ANNE BARNHART, Commissioner of the Social Security Administration, Defendant.</p>	<p>SCHEDULING ORDER</p> <p>Case No. 2:06-CV-536 TS</p>
---	--

The Court establishes the following scheduling order:

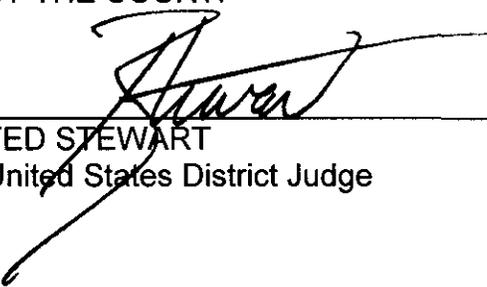
1. Defendant's is on file.
2. Plaintiff's brief should be filed by November 17, 2006. Plaintiff's brief should not exceed fifteen (15) pages in length, exclusive of face sheet, table of contents, statements of issues and facts, and exhibits. Plaintiff's statement of facts should not exceed eight (8) pages in length.
3. Defendant's answer brief should be filed by December 18, 2006. Defendant's brief should not exceed fifteen (15) pages in length, exclusive of face sheet, table of contents, statements of issues and facts, and exhibits. Defendant's statement of facts should not exceed eight (8) pages in length.

4. Plaintiff may file an optional reply brief by January 3, 2007. Plaintiff's reply memorandum should not exceed ten (10) pages. It is further

ORDERED that a one-hour hearing be held in this matter on January 8, 2007, at 3:00 p.m. The Court will have already reviewed the file, pleadings, and administrative record prior to the hearing. The court will hear argument of counsel and intends to rule at the close of the hearing. This hearing will not be vacated.

DATED September 5, 2006,

BY THE COURT:



TED STEWART
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH CENTRAL DIVISION

Pennie Knudson,

Plaintiff,

vs.

Utah State Department of Health, et al,

Defendant.

**SCHEDULING ORDER AND
ORDER VACATING HEARING**

Case No. 2:06cv00546 PGC

District Judge Paul G. Cassell

Pursuant to Fed.R. Civ P. 16(b), the Magistrate Judge¹ received the Attorneys' Planning Report filed by counsel. The following matters are scheduled. The times and deadlines set forth herein may not be modified without the approval of the Court and on a showing of good cause.

IT IS ORDERED that the Initial Pretrial Hearing set for November 8, 2006, at 3:00 p. m. is VACATED.

****ALL TIMES 4:30 PM UNLESS INDICATED****

- | 1. PRELIMINARY MATTERS | <u>DATE</u> |
|---|--------------------|
| Nature of claim(s) and any affirmative defenses: | |
| a. Was Rule 26(f)(1) Conference held? | <u>08/01/06</u> |
| b. Has Attorney Planning Meeting Form been submitted? | <u>Yes</u> |
| c. Was 26(a)(1) initial disclosure completed? | <u>08/31/06</u> |
-
- | 2. DISCOVERY LIMITATIONS | <u>NUMBER</u> |
|---|----------------------|
| a. Maximum Number of Depositions by Plaintiff(s) | <u>10</u> |
| b. Maximum Number of Depositions by Defendant(s) | <u>10</u> |
| c. Maximum Number of Hours for Each Deposition
(unless extended by agreement of parties) | <u>7</u> |
| d. Maximum Interrogatories by any Party to any Party | <u>50</u> |
| e. Maximum requests for admissions by any Party to any Party | <u>n/a</u> |
| f. Maximum requests for production by any Party to any Party | <u>n/a</u> |

	<u>DATE</u>
3. AMENDMENT OF PLEADINGS/ADDING PARTIES²	
a. Last Day to File Motion to Amend Pleadings	<u>11/30/06</u>
b. Last Day to File Motion to Add Parties	<u>11/30/06</u>
4. RULE 26(a)(2) REPORTS FROM EXPERTS³	
a. Plaintiff	<u>02/28/07</u>
b. Defendant	<u>03/31/07</u>
c. Counter reports	<u>n/a</u>
5. OTHER DEADLINES	
a. Discovery to be completed by:	
Fact discovery	<u>04/30/07</u>
Expert discovery	<u>04/30/07</u>
b. <i>(optional)</i> Final date for supplementation of disclosures and discovery under Rule 26 (e)	
c. Deadline for filing dispositive or potentially dispositive motions	<u>05/30/07</u>
6. SETTLEMENT/ ALTERNATIVE DISPUTE RESOLUTION	
a. Referral to Court-Annexed Mediation	<u>No</u>
b. Referral to Court-Annexed Arbitration	<u>No</u>
c. Evaluate case for Settlement/ADR on	<u>04/30/07</u>
d. Settlement probability:	<u>Good</u>
7. TRIAL AND PREPARATION FOR TRIAL	
a. Rule 26(a)(3) Pretrial Disclosures ⁴	
Plaintiff	8/24/07
Defendant	9/7/07
b. Objections to Rule 26(a)(3) Disclosures (if different than 14 days provided in Rule)	
c. Special Attorney Conference ⁵ on or before	9/21/07
d. Settlement Conference ⁶ on or before	10/5/07
e. Final Pretrial Conference	<u>3:00 p.m.</u> <u>10/18/07</u>

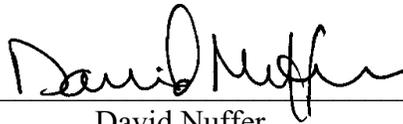
f. Trial	<u>Length</u>	<u>Time</u>	<u>Date</u>
i. Bench Trial			
ii. Jury Trial	<u>2 days</u>	<u>8:00 a.m.</u>	<u>11/5/07</u>

8. OTHER MATTERS:

Counsel should contact chambers staff of the District Judge regarding Daubert and Markman motions to determine the desired process for filing and hearing of such motions. All such motions, including Motions in Limine should be filed well in advance of the Final Pre Trial. Unless otherwise directed by the court, any challenge to the qualifications of an expert or the reliability of expert testimony under Daubert must be raised by written motion before the final pre-trial conference.

Dated this 1st day of September, 2006.

BY THE COURT:



David Nuffer
U.S. Magistrate Judge

1. The Magistrate Judge completed Initial Pretrial Scheduling under DUCivR 16-1(b) and DUCivR 72-2(a)(5). The name of the Magistrate Judge who completed this order should NOT appear on the caption of future pleadings, unless the case is separately referred to that Magistrate Judge. A separate order may refer this case to a Magistrate Judge under DUCivR 72-2 (b) and 28 USC 636 (b)(1)(A) or DUCivR 72-2 (c) and 28 USC 636 (b)(1)(B). The name of any Magistrate Judge to whom the matter is referred under DUCivR 72-2 (b) or (c) should appear on the caption as required under DUCivR10-1(a).
2. Counsel must still comply with the requirements of Fed. R. Civ. P. 15(a).
3. A party shall disclose the identity of each testifying expert and the subject of each such expert's testimony at least 60 days before the deadline for expert reports from that party. This disclosure shall be made even if the testifying expert is an employee from whom a report is not required.
4. Any demonstrative exhibits or animations must be disclosed and exchanged with the 26(a)(3) disclosures.
5. The Special Attorneys Conference does not involve the Court. Counsel will agree on voir dire questions, jury instructions, a pre-trial order and discuss the presentation of the case. Witnesses will be scheduled to avoid gaps and disruptions. Exhibits will be marked in a way that does not result in duplication of documents. Any special equipment or courtroom arrangement requirements will be included in the pre-trial order.
6. The Settlement Conference does not involve the Court unless a separate order is entered. Counsel must ensure that a person or representative with full settlement authority or otherwise authorized to make decisions regarding settlement is available in person or by telephone during the Settlement Conference.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

<p>John Lee Kitchen, Plaintiff,</p> <p>v.</p> <p>Dan Willoughby, in his individual capacity; West Valley City, a municipality; John Does 1-5, Defendants.</p>	<p>SCHEDULING ORDER AND ORDER VACATING HEARING</p> <p>Case No. 2:06CV561 PGC</p> <p>District Judge Paul G. Cassell</p>
---	--

Pursuant to Fed.R. Civ P. 16(b), the Magistrate Judge¹ received the Attorneys' Planning Report filed by counsel. The following matters are scheduled. The times and deadlines set forth herein may not be modified without the approval of the Court and on a showing of good cause.

IT IS ORDERED that the Initial Pretrial Hearing set for October 11, 2006, at 2:30 p.m. is VACATED.

ALL TIMES 4:30 PM UNLESS INDICATED

1.	PRELIMINARY MATTERS	DATE
a.	Was Rule 26(f)(1) Conference held? Yes	<u>08/23/06</u>
b.	Has Attorney Planning Meeting Form been submitted? Yes	<u>08/23/06</u>
c.	Was 26(a)(1) initial disclosure completed? No	<u>08/31/06</u>
2.	DISCOVERY LIMITATIONS	NUMBER
a.	Maximum Number of Depositions by Plaintiff(s)	<u>10</u>
b.	Maximum Number of Depositions by Defendant(s)	<u>10</u>
c.	Maximum Number of Hours for Each Deposition (unless extended by agreement of parties)	<u>4</u>
d.	Maximum Interrogatories by any Party to any Party	<u>45</u>
e.	Maximum requests for admissions by any Party to any Party	<u>25</u>
f.	Maximum requests for production by any Party to any Party	<u>45</u>

3.	AMENDMENT OF PLEADINGS/ADDING PARTIES ²	DATE
a.	Last Day to File Motion to Amend Pleadings	<u>02/28/07</u>
b.	Last Day to File Motion to Add Parties	<u>02/28/07</u>
4.	RULE 26(a)(2) REPORTS FROM EXPERTS ³	DATE
a.	Plaintiff	<u>04/30/07</u>
b.	Defendant	<u>06/29/07</u>
c.	Counter reports	<u>07/31/07</u>
5.	OTHER DEADLINES	DATE
a.	Discovery to be completed by:	
	Fact discovery	<u>03/30/07</u>
	Expert discovery	<u>09/28/07</u>
b.	<i>(optional)</i> Final date for supplementation of disclosures and discovery under Rule 26 (e)	
c.	Deadline for filing dispositive or potentially dispositive motions	<u>10/31/07</u>
6.	SETTLEMENT/ALTERNATIVE DISPUTE RESOLUTION	DATE
a.	Referral to Court-Annexed Mediation:	<u>No</u>
b.	Referral to Court-Annexed Arbitration	<u>No</u>
c.	Evaluate case for Settlement/ADR on	
d.	Settlement probability:	unknown
7.	TRIAL AND PREPARATION FOR TRIAL	TIME DATE
a.	Rule 26(a)(3) Pretrial Disclosures ⁴	
	Plaintiff	<u>1/18/08</u>
	Defendant	<u>2/1/08</u>
b.	Objections to Rule 26(a)(3) Disclosures (if different than 14 days provided in Rule)	

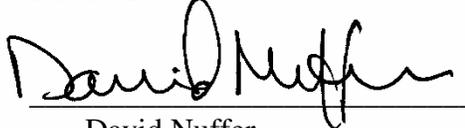
- | | | | |
|----|---|---------------|--------------------------|
| c. | Special Attorney Conference ⁵ on or before | | <u>2/15/08</u> |
| d. | Settlement Conference ⁶ on or before | | <u>2/29/08</u> |
| e. | Final Pretrial Conference | 3:00 p.m. | <u>3/13/08</u> |
| f. | Trial | <u>Length</u> | |
| | i. Bench Trial | | |
| | ii. Jury Trial | <u>5 days</u> | 8:00 a.m. <u>3/31/08</u> |

8. OTHER MATTERS

Counsel should contact chambers staff of the District Judge regarding Daubert and Markman motions to determine the desired process for filing and hearing of such motions. All such motions, including Motions in Limine should be filed well in advance of the Final Pre Trial. Unless otherwise directed by the court, any challenge to the qualifications of an expert or the reliability of expert testimony under Daubert must be raised by written motion before the final pre-trial conference.

Dated this 1st date of September, 2006.

BY THE COURT:



David Nuffer
U.S. Magistrate Judge

¹ The Magistrate Judge completed Initial Pretrial Scheduling under DUCivR 16-1(b) and DUCivR 72-2(a)(5). The name of the Magistrate Judge who completed this order should NOT appear on the caption of future pleadings, unless the case is separately referred to that Magistrate Judge. A separate order may refer this case to a Magistrate Judge under DUCivR 72-2 (b) and 28 USC 636 (b)(1)(A) or DUCivR 72-2 (c) and 28 USC 636 (b)(1)(B). The name of any Magistrate Judge to whom the matter is referred under DUCivR 72-2 (b) or (c) should appear on the caption as required under DUCivR10-1(a).

² Counsel must still comply with the requirements of Fed. R. Civ. P. 15(a).

³ A party shall disclose the identity of each testifying expert and the subject of each such expert's testimony at least 60 days before the deadline for expert reports from that party. This disclosure shall be made even if the testifying expert is an employee from whom a report is not required.

⁴ Any demonstrative exhibits or animations must be disclosed and exchanged with the 26(a)(3) disclosures.

⁵ The Special Attorneys Conference does not involve the Court. Counsel will agree on voir dire questions, jury instructions, a pre-trial order and discuss the presentation of the case. Witnesses will be scheduled to avoid gaps and disruptions. Exhibits will be marked in a way that does not result in duplication of documents. Any special equipment or courtroom arrangement requirements will be included in the pre-trial order.

⁶ The Settlement Conference does not involve the Court unless a separate order is entered. Counsel must ensure that a person or representative with full settlement authority or otherwise authorized to make decisions regarding settlement is available in person or by telephone during the Settlement Conference.

FILED
DISTRICT COURT
2006 SEP -5 A 10: 01
DISTRICT OF UTAH
DEPUTY CLERK

KIM R. WILSON (3512)
STANLEY J. PRESTON (4119)
DAVID L. PINKSTON (6630)
SNOW, CHRISTENSEN & MARTINEAU
10 Exchange Place, Eleventh Floor
Post Office Box 45000
Salt Lake City, Utah 84145-5000
Telephone: (801) 521-9000
Facsimile: (801) 363-0400

Attorneys for Defendants

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

UNION SQUARE ASSOCIATES, LLC,
a Utah limited liability company

Plaintiff,

vs.

OGDEN CITY, a municipal corporation and
political subdivision of the State of Utah; and
**THE REDEVELOPMENT AGENCY OF
OGDEN CITY**, a political subdivision of the
State of Utah; and **SCOTT BROWN** and
STUART REID, individuals, and **JOHN
DOES 1-10**

Defendants.

**ORDER WITHDRAWING THE
REFERENCE**

Case No. 2:06CV54TS
(Adversary Proceeding No. 06P-2318)

Judge Ted Stewart

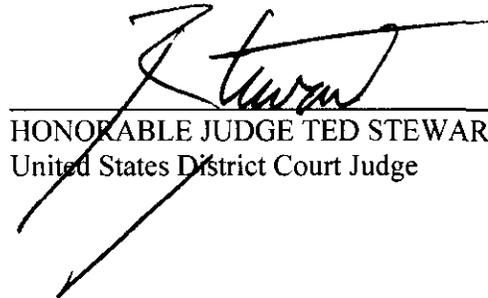
[FILED ELECTRONICALLY]

The Defendants' Motion to Withdraw the Reference of Adversary Proceeding having been filed herein, and Plaintiff's counsel having indicated to the Court that they do not intend to oppose said Motion, and the Court being fully advised in the premises and good cause appearing therefor, it is hereby

ORDERED ADJUDGED AND DECREED that the reference of the above-captioned adversary proceeding to the Bankruptcy Court is hereby withdrawn such that the above-captioned adversary proceeding shall be heard, tried, and determined in its entirety by the United States District Court for the District of Utah.

DATED this 5th day of September, 2006.

BY THE COURT:



HONORABLE JUDGE TED STEWART
United States District Court Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

ARTIFICIAL NAIL TECHNOLOGIES, INC., a Utah corporation and TRUE FIT NAILS, LLC a Utah limited liability company;

Plaintiffs,

vs.

FLOWERING SCENTS, LLC, a Nevada limited liability company; SEVEA INTERNATIONAL, INC., a Nevada corporation; MICHAEL MACRIS, an individual; CHRISTINA MCNALLY, an individual; and CRAIG GIFFORD, an individual;

Defendants.

ORDER

Case No. 2:06CV609DAK

This matter is before the court on Plaintiffs' Artificial Nail Technologies, Inc. and True Fit Nails, LLC (collectively "Plaintiffs" or "ANT") Motions for Preliminary Injunction and Writ of Replevin. The court held an evidentiary hearing on the motions on September 1, 2006. At the hearing, Brent E. Johnson, Jennifer L. Lange and S. Brandon Owen represented Plaintiffs. Scott Savage and Stephen Waldron represented Defendants Flowering Scents, LLC, SEVEA International, Inc., Michael Macris, Christina McNally and Craig Gifford (collectively "Defendants"). After a careful review of all the memoranda and exhibits submitted by the

parties, the testimony and evidence admitted at the hearing, and the law and facts relevant to these motions, the court enters the following Order.

I. BACKGROUND

ANT, its predecessor entity True Fit Nails (“TFN”) and its various individuals, including Gifford, have spent substantial time and money in acquiring and developing specialized technologies and processes related to patented precision-fit artificial fingernails. In early 2006, ANT negotiated with Flowering Scents (“FS”), a multi-level marketing business that claimed to possess a distributor base that could market ANT’s artificial nails. ANT and FS negotiated and signed an Asset Contribution Agreement (“ACA”), wherein FS and ANT agreed to contribute substantially all of their assets to form a new entity, Sevea, in return for equity in Sevea. ANT was to contribute its intellectual property in the form of the patents and processes, as well as its equipment and physical plant to the new Sevea joint venture. Both FS and ANT were to receive shares of stock in return for contribution of their assets.

In connection with the formation of Sevea, FS, Gifford, Macris and McNally, each a director of Sevea, entered into confidential and nondisclosure agreements with ANT, in an effort to protect FS and ANT’s proprietary and confidential information if the ACA was not consummated.

Plaintiffs claim that despite entering into the ACA, no contribution or exchange of stock took place among ANT, FS and Sevea as provided in the ACA. Specifically, ANT claims that it never received any shares of Sevea stock or other consideration for its assets which caused the

ACA to terminate pursuant to Section 7.3. Defendants' shifting view of the ACA's validity punctuates the dispute in the facts over the ACA, distribution of stocks and assets. However, it appears the asset exchanges occurred. Plaintiffs have since demanded the return of their assets.

Plaintiffs now seek two preliminary injunctions and a writ of replevin. Plaintiffs claim that because the ACA terminated pursuant to its own terms, Defendants are infringing on Plaintiffs' trade secrets and proprietary information and are unlawfully holding Plaintiffs' assets and leasehold interest in the ANT facility. Plaintiffs claim that Defendants, through Sevea, are directly competing with ANT by using its facility, equipment, proprietary information and processes. Plaintiffs also claim that ANT is currently, and will continue to be, harmed by this unfair competition. Plaintiffs claim that FS, Gifford, Macris, and McNally, through their involvement with ANT, were in a unique position to know ANT's confidential and proprietary information and trade secrets and are now using that information to compete with ANT. Plaintiffs claim that each of the individuals agreed to injunctive relief as a term of their employment agreements with ANT.

II. DISCUSSION

A preliminary injunction is an extraordinary remedy that is not routinely granted. *See National Steel Car v. Canadian Pac. R.R.*, 357 F.3d 1319, 1324 (Fed. Cir. 2004). It should not be granted unless the movant's right to relief is "clear and unequivocal." *Dominion Video Satellite, Inc. v. Echostar Satellite Corp.*, 269 F.3d 1149, 1154 (10th Cir. 2001); *SCFC ILC v. Visa USA, Inc.*, 936 F.2d 1096, 1098 (10th Cir. 1991). For a preliminary injunction to issue a plaintiff must show (1) a substantial likelihood of success on the merits; (2) immediate irreparable harm unless the injunction issues; (3) the threatened injury outweighs the damage the

proposed injunction may cause defendants; and (4) the injunction, if issued, would not be adverse to the public interest. *See Schrier v. Univ. of Colo.*, 427 F.3d 1253, 1258 (10th Cir. 2005). A preliminary injunction that alters the status quo, as in this case, is disfavored and Plaintiff must meet the heavier burden of demonstrating that the four factors of a preliminary injunction weigh “heavily and compellingly” in its favor before an injunction may issue. *Kikumura v. Hurley*, 242 F.3d 950 (10th Cir. 2001); *Visa*, 936 F.2d 1098-99.

Based on the materials before the court and the testimony heard, at this preliminary stage, the court does not believe that Plaintiffs have proven by the requisite clear and unequivocal standard necessary for a preliminary injunction to issue. Yet, given the possibility that Plaintiffs may be entitled to injunctive relief as facts develop during the discovery process, the court grants Defendants’ request for a period of expedited discovery. The parties should be allowed and are entitled to discovery of information relating to the development and use of the artificial nail patents and products being offered by Sevea and ANT. The court notes, however, that it is troubled by the seemingly carefree attitude toward several important documents in this case by the parties, namely the employment agreements and the Asset Contribution Agreement.

The parties have until Monday, January 15, 2007 to complete discovery. Any additional briefing must be filed by both parties no later than 5:00 p.m. on Monday, January 29, 2007. The parties should exchange their materials by hand courier between local counsel and by facsimile and overnight courier should out-of-state counsel be retained.

The court will hold a hearing on Plaintiffs’ motions for preliminary injunction on February 26 and February 27, 2007, beginning at 9 a.m. and continuing until 5 p.m. both days, if necessary. Each side will be allowed to submit any declarations necessary to support their

positions and will be allowed to call up to three live witnesses at the hearing.

Plaintiffs' motion for writ of replevin is, for the most part, moot because Defendants have offered the return of Plaintiffs' equipment. Therefore, Plaintiffs' motion for writ of replevin is denied.

CONCLUSION

For the foregoing reasons, and good cause appearing, IT IS HEREBY ORDERED that Plaintiffs' Motions for Preliminary Injunction and Writ of Replevin are DENIED, pending the expedited discovery and schedule for further briefing outlined above.

DATED this 5th day of September, 2006.

BY THE COURT:

A handwritten signature in black ink, reading "Dale A. Kimball", written over a horizontal line.

DALE A. KIMBALL
United States District Judge

FILED
U.S. DISTRICT COURT

2006 SEP -5 A 10: 01

DISTRICT OF UTAH

BY: _____
DEPUTY CLERK

Prepared and Submitted by:

Barbara K. Polich (#2620)
Boyd L. Rogers (#10095)
BALLARD SPAHR ANDREWS & INGERSOLL, LLP
One Utah Center, Suite 600
201 South Main Street
Salt Lake City, Utah 84111-2221
Telephone: (801) 531-3000
Facsimile: (801) 531-3001

Attorneys for Plaintiffs Nature's Sunshine
Products, Inc., Nature's Sunshine Direct
Products, Inc., and Nature's Sunshine Japan Co., Ltd.

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

**NATURE'S SUNSHINE PRODUCTS,
INC., NATURE'S SUNSHINE DIRECT
PRODUCTS, INC., and NATURE'S
SUNSHINE JAPAN CO., LTD.,**

Plaintiffs,

v.

PETER DALE,

Defendant.

**ORDER GRANTING EX
PARTE MOTION FOR WITHDRAWAL
OF COUNSEL**

Case No.: 2:06CV00674

Honorable Ted Stewart

Pursuant to DUCivR 83-1.4, the Court hereby GRANTS the Motion of Ballard Spahr
Andrews & Ingersoll, LLP to withdraw as counsel for Plaintiffs in this action.

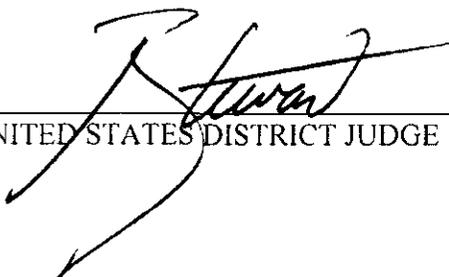
Until further notice, all papers required to be served pursuant to Fed. R. Civ. P. 5 shall be
served on Plaintiffs:

Plaintiff Nature's Sunshine Products, Inc.: 75 East 1700 South, Provo, Utah 84605.

Plaintiff Nature's Sunshine Direct Products, Inc.: 75 East 1700 South, Provo, Utah
84605.

Plaintiff Nature's Sunshine Japan Co., Ltd.: Akasaka KSA Bldg., 2F 8-10-49, Akasaka,
Minato-Ku, Tokyo, 107-0052.

DATED this 5th day of September, 2006.


UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

TERRY C. TURNER,

Plaintiff,

vs.

GOLDEN EAGLE INTERNATIONAL,
INC., et al.,

Defendants.

ORDER

Case No. 2:06-CV-738 TC

For the reasons set forth during the September 5, 2006 hearing on Plaintiff's Motion for Temporary Restraining Order, and based on the conditions agreed to by all counsel, Plaintiff's Motion for TRO is DENIED.

IT IS SO ORDERED this 5th day of September, 2006.

BY THE COURT:



TENA CAMPBELL
United States District Judge

UNITED STATES DISTRICT COURT

FILED DISTRICT COURT

Central

District of

2006 SEP UTAH P 2:46

John A. Campbell

Plaintiff

V.

Municipality of Lakewood, NJ

Defendant

ORDER ON APPLICATION TO PROCEED WITHOUT PREPAYMENT OF FEES

DISTRICT OF UTAH

Judge Ted Stewart DECK TYPE: Civil DATE STAMP: 09/01/2006 @ 15:13:13 CASE NUMBER: 2:06CV00739 TS

Having considered the application to proceed without prepayment of fees under 28 USC §1915;

IT IS ORDERED that the application is:

[X] GRANTED.

[X] The clerk is directed to file the complaint.

[] IT IS FURTHER ORDERED that the clerk issue summons and the United States marshal serve a copy of the complaint, summons and this order upon the defendant(s) as directed by the plaintiff. All costs of service shall be advanced by the United States.

[] DENIED, for the following reasons:

ENTER this

9/1/06 day of

September 2006

Signature of Judge Brooke C. Wells

Magistrate Judge Brooke C. Wells Name and Title of Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

RICHARD DEE THOMAS,
Plaintiff,

v.

GEORGE VAUGHN et al.,
Defendants.

Case No. 2:93-CV-925 PGC

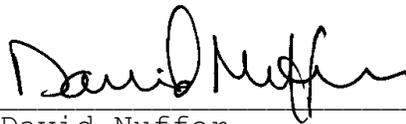
**ORDER TERMINATING
APPOINTMENT OF COUNSEL**

Karl Cannon was appointed to represent Plaintiff Richard Dee Thomas in this case by an appointment made in November 1998. The case has concluded with summary judgment being rendered against the Plaintiff

IT IS HEREBY ORDERED that Karl Cannon is relieved of his appointment in this case.

DATED this 5th day of September, 2006.

BY THE COURT:



David Nuffer
United States Magistrate Judge

FILED
U.S. DISTRICT COURT

2006 SEP -1 P 2: 25

DISTRICT OF UTAH

BY: _____
DEPUTY CLERK

BRETT L. TOLMAN, United States Attorney (#8821)
JEANNETTE F. SWENT, Assistant United States Attorney (#6043)
Attorneys for the United States of America
185 South State Street, Suite 400
Salt Lake City, Utah 84111-1506
Telephone (801) 524-5682

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,)
)
 Plaintiff,) ORDER
)
 vs.)
)
 DOUGLAS JOSHUA ELLERMAN*,) Case No. 2:97CR00196-001
)
) Honorable J. Thomas Greene
 Defendant,)

The Court, having received the Stipulation of the parties dated August 25, 2006
and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. Judgment was entered on September 10, 1998 in the total sum of \$750,300.00 in favor of the United States of America (hereafter the "United States") and against Douglas Joshua Ellerman* (hereafter "Ellerman*").



2. Ellerman* has agreed to pay and the United States has agreed to accept monthly installment payments from him in the amount of \$175.00 commencing on October 1, 2006 and continuing thereafter on the 1st day of each month for a period of 12 months. At the end of said time period, and yearly thereafter, Ellerman* shall submit a current financial statement to the United States Attorney's Office. This payment schedule will be evaluated and may be modified, based on the documented financial status of Ellerman*.

3. In addition to the regular monthly payment set forth in paragraph 2, above, Ellerman* has agreed that the United States may submit his debt in the above-captioned case to the State of Utah and the U.S. Department of Treasury for inclusion in the State Finder program and the Treasury Offset program. Ellerman* understands that under these programs, any state or federal payment that he would normally receive may be offset and applied toward the debt in the above-captioned case.

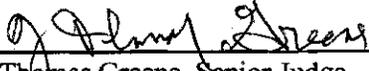
4. Ellerman* shall submit all financial documentation in a timely manner and keep the United States Attorney's Office apprised of the following:

- a. Any change of address; and
- b. Any change in employment.

5. The United States has agreed to refrain from execution on the judgment so long as Ellerman* complies strictly with the agreement set forth in paragraphs 2 and 4, above. In the event Ellerman* fails to comply strictly with the terms set forth in the Stipulation dated August 25, 2006 the United States may move the Court ex parte for a writ of execution and/or a writ of garnishment or any other appropriate order it deems necessary for the purpose of obtaining satisfaction of the judgment in full.

DATED this 25 day of August, 2006.

BY THE COURT:



J. Thomas Greene, Senior Judge
United States District Court

APPROVED AS TO FORM:



DOUGLAS JOSHUA ELLERMAN*
Defendant

**In the United States District Court
for the District of Utah, Central Division**

FILED
U.S. DISTRICT COURT

1991 SEP -1 P 2: 25

DISTRICT OF UTAH

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GREGORY CHECORA, et. al.

Defendants.

BY: _____
DEPUTY CLERK

ORDER

Case No. 2:97CR235 JTG

To: United States District Clerk of Court

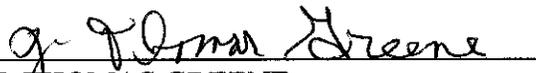
The Ute Indian Tribe Accounting Office has been directed to divert \$100 per month, per defendant, for payment of restitution from the following individuals: Gregory Checora, Reuben Cuch Jr., Warrenell Cuch, and Bobby Redcap. The disbursements are to be made to the Clerk of the Court for the United States District Court. The Clerk of the Court is first to disburse \$5,165.00, joint and severally from each defendant to the Ute Indian Tribe and the Utah State Office of Crime Victims.

After the \$5,165 has been paid, the said individuals are then obligated to pay \$5000 each to the Utah State Division of Family Services, for a total of \$20,000 to be paid by the four persons above named. These funds are for the use and benefit of the children of Benji Murray, namely Jeffrey Murray (a juvenile) and Jay Murray, age 18 or older. Previously it had been contemplated that an attorney, Mr. Martin Olsen, was going to operate on a pro bono

capacity to distribute those funds. This has not been done and that designation is cancelled and no longer necessary. All disbursements will be made by the Clerk of the District Court. This Order supercedes all prior orders concerning restitution, including the Order of January 5, 2000.

IT IS SO ORDERED.

DATED this 31st day of August, 2006.



J. THOMAS GREENE
UNITED STATES DISTRICT JUDGE

In the United States District Court
for the District of Utah, Central Division

FILED
U.S. DISTRICT COURT

2006 SEP -1 P 2:25

DISTRICT OF UTAH

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GREGORY CHECORA, et. al.

Defendants.

BY: _____
DEPUTY CLERK

ORDER

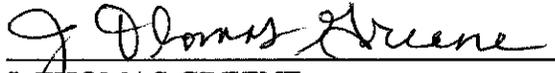
Case No. 2:97CR235 JTG

To: The Ute Indian Tribe Accounting Office

The Ute Indian Tribe Accounting Office is directed to withhold \$100 per month, per defendant, from the approximately \$200 each of the following defendants receive monthly in tribal dividend payments: Gregory Checora, Reuben Cuch Jr., Warrenell Cuch, and Bobby Redcap. The Office is to submit this amount monthly (a total of \$400 per month) to the United States District Court, Clerk of the Court, to be applied toward the restitution ordered in the above entitled case.

IT IS SO ORDERED.

DATED this 31st day of August, 2006.



J. THOMAS GREENE
UNITED STATES DISTRICT JUDGE